

Enclosure
CLEAN AIR ACT MOBILE SOURCE EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO. CAA-15-8190

Respondent: GXI Outdoor Power, LLC.
222 Parkridge Drive
Clayton, North Carolina 27527

1. The parties enter into this Clean Air Act Mobile Source Expedited Settlement Agreement (Agreement) in order to settle the civil violations discovered as a result of the inspections specified in Table 1, attached, incorporated into this Agreement by reference. The civil violations that are the subject of this Agreement are described in Table 2, attached, incorporated into the Agreement by reference, regarding the vehicles/engines specified therein.
2. Respondent admits to being subject to the Clean Air Act (CAA) and its associated regulations and that the United States Environmental Protection Agency (EPA) has jurisdiction over the Respondent and the Respondent's conduct described in Table 2. Respondent does not contest the findings detailed therein, and waives any objections Respondent may have to the EPA's jurisdiction.
3. Respondent consents to the payment of a penalty in the amount of \$21,800, further described in Table 3, attached, incorporated into this Agreement by reference. Respondent agrees to follow the instructions in "CAA Mobile Source Expedited Settlement Agreement Instructions," attached, incorporated into this Agreement by reference. Respondent certifies that the required remediation, detailed in Table 3, has been carried out.
4. By its first signature below, the EPA approves the findings resulting from the inspection and alleged violations set forth in Table 1 and Table 2. Upon signing and returning this Agreement to the EPA, Respondent consents to the terms of this Agreement without further notice. Respondent acknowledges that this Agreement is binding on the parties signing below, and becomes effective on the date of the EPA Air Enforcement Division Director's ratifying signature.

APPROVED BY EPA:

for 
Phillip A. Brooks, Director, Air Enforcement Division

Date: 4/14/2015

APPROVED BY RESPONDENT:

Name (print): Gordon Jackson

Title (print): President

Signature: 

Date: 5/13/2015

RATIFIED BY EPA:


Phillip A. Brooks, Director, Air Enforcement Division

Date: 5/29/2015

Table 1 - Inspection Information

Entry/Inspection Date(s):		Docket Number:	
February 12, 2013 and March 25, 2013		C A A - 1 5 - 8 1 9 0	
Inspection Location:		Entry/Inspection Number(s)	
Port of Long Beach / Port of Norfolk		G L 5 - 0 3 0 0 4 4 0 - 7	
Address:			
301 East Ocean Drive / 101 East Main Street		G L 5 - 0 3 0 1 6 9 8 - 9	
Cities:		Inspector(s) Name(s):	
Long Beach / Norfolk		Tony Miller, Ross Ruske	
States:		EPA Approving Official:	
CA / VA	Zip Codes: 90802 / 23510	Phillip A. Brooks	
Respondent:		EPA Enforcement Contact:	
GXI Outdoor Power LLC		Greg Orehowsky (202) 343-9292	

Table 2 - Description of Violation and Vehicles/Engines

On February 12 (Port of Long Beach) and March 25 (Port of Norfolk), 2013, GXI Outdoor Power LLC (GXI) imported 120 of the G5000S generators and 120 of the G8000S generators at each location. The EPA has determined that the 240 gasoline generators, model G5000S, with engines identified as covered by engine family CCSPS.2702XA regulated by 40 C.F.R. Parts 1054, 1060 and 1068 (Subject G5000S Generators), represent uncertified engines imported in violation of Title II of the Clean Air Act (CAA) because they were manufactured with carburetors that do not conform to the description in the COC application. It is a violation of Sections 203(a)(1) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a)(1) and 7547(d), for any person to import an engine or equipment subject to these regulations unless such engine or equipment is covered by a Certificate of Conformity (COC) issued by EPA. In addition, for the 240 (120 at each port) model G8000S gasoline generators with engines identified as covered by engine family CCSPS.4392XA (Subject G8000S Generators), the compliance statement on the emission control information label did not comply with the requirements of 40 CFR § 1054.135. Not only was the month and year of manufacture of the engine not included on the label nor permanently identified elsewhere on the engine, but the labels use the incorrect language, "THIS ENGINE CONFORMS TO US EPA REGS FOR 2012" instead of the required language "THIS ENGINE MEETS U.S. EXH/EVAP REGS FOR 2012". By importing the 240 G8000S generators, GXI committed 240 violations of the requirements in 40 CFR § 1054.135 and 1068.101(a)(1).

Equipment Description	Generator Model	Engine Manufacturer	Engine Family	Entry Date	Quantity
Gasoline Generators	G5000S	Chonging Shineray Agricultural Machinery Co., LTD	CCSPS.2702XA	February 12, 2013 and March 25, 2013	240
	G8000S		CCSPS.4392XA		240

Table 3 - Penalty and Required Remediation

Penalty	\$21,800
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Required Remediation	GXI must export all Subject G5000S Generators in its inventory to a country other than Canada or Mexico, and provide the EPA with a report either documenting the exportation or proving that it has no Subject G5000S Generators in its inventory. GXI must remediate the Subject G8000S Generators in its inventory by properly labeling the engines. Instructions for relabeling are included in Enclosure 2.
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Enclosure

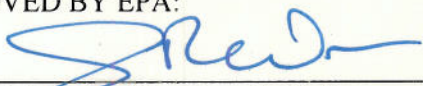
CLEAN AIR ACT MOBILE SOURCE EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO. CAA-15-8149

Respondent: CLC Logistics Inc.
11576 Yorba Avenue
Chino, CA 91710

1. The parties enter into this Clean Air Act Mobile Source Expedited Settlement Agreement (Agreement) in order to settle the civil violations discovered as a result of the inspection specified in Table 1, attached, incorporated into this Agreement by reference. The civil violations that are the subject of this Agreement are described in Table 2, attached, incorporated into the Agreement by reference, regarding the vehicles/engines specified therein.
2. Respondent admits to being subject to the Clean Air Act (CAA) and its associated regulations and that the United States Environmental Protection Agency (EPA) has jurisdiction over the Respondent and the Respondent's conduct described in Table 2. Respondent does not contest the findings detailed therein, and waives any objections Respondent may have to the EPA's jurisdiction.
3. Respondent consents to the payment of a penalty in the amount of \$7,133, further described in Table 3, attached, incorporated into this Agreement by reference. Respondent agrees to follow the instructions in "CAA Mobile Source Expedited Settlement Agreement Instructions," attached, incorporated into this Agreement by reference. Respondent certifies that the required remediation, detailed in Table 3, has been carried out.
4. By its first signature below, the EPA approves the findings resulting from the inspection and alleged violations set forth in Table 1 and Table 2. Upon signing and returning this Agreement to the EPA, Respondent consents to the terms of this Agreement without further notice. Respondent acknowledges that this Agreement is binding on the parties signing below, and becomes effective on the date of the EPA Air Enforcement Division Director's ratifying signature.

APPROVED BY EPA:



Phillip A. Brooks, Director, Air Enforcement Division

Date: 4/9/2015

APPROVED BY RESPONDENT:

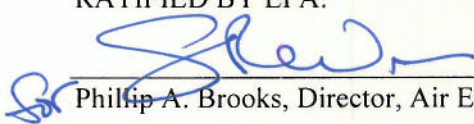
Name (print): Shun Hsiang Chen

Title (print): CEO

Signature: Shun Hsiang Chen

Date: 4/17/2015

RATIFIED BY EPA:



Phillip A. Brooks, Director, Air Enforcement Division

Date: 6/4/2015

Table 1 - Inspection Information

Entry/Inspection Date(s):		Docket Number:	
October 14, 2014/November 3, 2014		C A A - 1 5 - 8 1 4 9	
Inspection Location:		Entry/Inspection Number(s)	
Cal Cartage		E A E - 1 0 6 1 0 8 0 - 4	
Address:			
22351 S. Wilmington Avenue			
City:		Inspector(s) Name(s):	
Carson		Eddie Puc Noh and Janice Chan	
State:	Zip Code:	EPA Approving Official:	
CA	90703	Phillip A. Brooks	
Respondent:		EPA Enforcement Contact:	
CLC Logistics Inc.		Janice Chan (Region 9), (415) 972-3308	

Table 2 - Description of Violation and Vehicles/Engines

On or about October 14, 2014, CLC Logistics Inc. (CLC Logistics) imported into the United States 1,070 spark-ignition recreational vehicle engines and 30 spark-ignition outboard motor engines (Subject Engines). The outboard motor engines are regulated by 40 C.F.R. Part 1045, the recreational vehicle engines are regulated by 40 C.F.R. Part 1051 and all of the Subject Engines are regulated by 40 C.F.R. Part 1068. It is a violation of Sections 203(a)(1) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a)(1) and 7547(d), for any person to import an engine subject to these regulations unless such engine is covered by a Certificate of Conformity (COC) issued by EPA and bears the required emissions control information (ECI) label, or is properly exempted or excluded from the certification requirements. An officer of the U.S. Department of Homeland Security's Bureau of Customs and Border Protection (CBP) examined the entry and inventoried the Subject Engines. None of the Subject Engines were labeled with the requisite ECI label, nor are they covered by a valid EPA-issued COC, and CLC Logistics has not declared any exemption or exclusions for the engines. Consequently, the importation of the Subject Engines that are uncertified and unlabeled is prohibited by CAA §§ 203(a)(1) and 213(d), 42 U.S.C. §§ 7522(a)(1) and 7547(d), and the implementing regulations at 40 C.F.R. §§ 1068.101(a)(1) and (b)(5). CLC Logistics committed 1,100 separate violations of 40 C.F.R. § 1068.101(a)(1) and (b)(5) by importing the Subject Engines.

Equipment Description	Claimed Engine Manufacturer	Model on Equipment	Model/ Identification on Packing List	Claimed Engine Family or Claimed Displacement	Quantity
Spark-Ignition Recreational Vehicle Engine	Lifan Industry (Group) Co., Ltd.	1P56FMJ	CK18	ECLGS.1471EP	30
	Lifan Industry (Group) Co., Ltd.	1P54FMI	CK07	ECLGS.1191CA	100
	Lifan Industry (Group) Co., Ltd.	1P52FMI	CK08	ECLGS.1191CA	60
	Lifan Industry (Group) Co., Ltd.	163FML	CK20	ECLGS.1961EP	20
	Zhejiang Yat Electrical Appliance Co., Ltd.	None	CK21 and CK19	EYATS.0474GA	800
	None	None	EN02	47cc Engine Kit, For QG50	60
Spark-Ignition Outboard Motor Engine	None	None	None	None	30

Table 3 - Penalty and Required Remediation

Penalty	\$7,133
Required Remediation	CLC Logistics must export the 1,100 uncertified Subject Engines to a country other than Canada or Mexico, and provide the EPA with a report documenting such exportation. If CBP has seized or exported the Subject Engines, CLC Logistics must provide the EPA with documentation of the seizure or exportation.

Enclosure
CLEAN AIR ACT MOBILE SOURCE EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO. CAA-15-MSEB-8195 Respondent:

Gillig LLC
25800 Clawiter Road
Hayward, CA 94545

1. The parties enter into this Clean Air Act Mobile Source Expedited Settlement Agreement (Agreement) in order to settle the civil violations discovered. The civil violations that are the subject of this Agreement are described in Table 1, attached, and incorporated into the Agreement by reference, regarding the vehicles/engines specified therein.
2. Respondent admits to being subject to the Clean Air Act (CAA) and its associated regulations and that the United States Environmental Protection Agency (EPA) has jurisdiction over the Respondent and the Respondent's conduct described in Table 1. Respondent does not contest the findings detailed therein, and waives any objections Respondent may have to EPA's jurisdiction.
3. Respondent consents to the payment of a penalty in the amount of \$55,000, further described in Table 2, attached, and incorporated into this Agreement by reference. Respondent agrees to follow the instructions in "CAA Mobile Source Expedited Settlement Agreement Instructions," attached, and incorporated into this Agreement by reference. Respondent certifies that the required remediation, detailed in Table 2, will be carried out.
4. By its first signature below, EPA approves the findings and alleged violations set forth in Table 2. Upon signing and returning this Agreement to the EPA, Respondent consents to the terms of this Agreement without further notice. Respondent acknowledges that this Agreement is binding on the parties signing below, and becomes effective on the date of the EPA Air Enforcement Division Director's ratifying signature.

APPROVED BY EPA:

for 
Phillip A. Brooks, Director, Air Enforcement Division

Date:  6/4/2015

APPROVED BY RESPONDENT:

Name (print): GREGORY J. VISMANA

Title (print): VP ENGINEERING

Signature: 

Date: 6/18/2015

RATIFIED BY EPA:


Phillip A. Brooks, Director, Air Enforcement Division

Date: 7/21/2015

Table 1 - Description of Violation and Vehicles/Engines

The transit buses described below (the Subject Vehicles) were not covered by a certificate of conformity (COC) before being sold, offered for sale, or introduced into commerce in the United States (U.S.). In addition, the Subject Vehicles bore a defective label that specified an invalid EPA Vehicle Family. The CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1), prohibits the sale, offer for sale, or introduction of vehicles into U.S. commerce unless the vehicles are covered by a COC and bear the required label. By introducing the Subject Vehicles into U.S. commerce without a COC, Gillig LLC (Gillig) committed 1732 violations of the CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1) and 40 C.F.R. Part 1037. By affixing a defective label to each Subject Vehicle and selling the Subject Vehicle for use in the U.S., Gillig committed 1732 violations of CAA § 203(a)(4), 42 U.S.C. § 7522(a)(4) and 40 C.F.R. Part 1037.

Subject Vehicle	Family	Manufacturer	Model Year	Quantity
Medium Heavy Vehicles (Cl. 6-7)	Vocational Vehicle 19.5K – 33K	Gillig LLC	2014	300
Heavy Heavy Vehicles (Cl. 8)	Vocational Vehicle > 33K	Gillig LLC	2014	1432

Table 2 - Penalty and Required Action

Penalty	\$55,000
Required Remediation	Gillig must send a letter to each purchaser that informs the purchaser of the correct EPA Vehicle Family and extends an offer to replace the label with one that bears the correct EPA Vehicle Family at the request of the purchaser.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AIR ENFORCEMENT DIVISION, WASHINGTON, D.C.**

In the Matter of:

Mercury Marine, a division of Brunswick Corporation,

Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB # 8129

1. This is an Administrative Settlement Agreement (Agreement) between the United States Environmental Protection Agency (EPA) and Mercury Marine, a division of Brunswick Corporation, (Mercury) (collectively, Parties). The purpose of this Agreement is to resolve alleged violations of the Clean Air Act (CAA) and its regulations.
2. Respondent in this matter is Mercury Marine. Respondent is a division of Brunswick Corporation, organized under the laws of the State of Delaware with an office at One North Field Ct., Lake Forest, Illinois 60045-4811. Mercury Marine manufactures and sells spark-ignition propulsion marine engines. Mercury Marine sells their engines domestically and abroad.
3. The EPA's delegated official and signatory to this Agreement is the Director of the Air Enforcement Division of the Office of Civil Enforcement of the Office of Enforcement and Compliance Assurance. The EPA enters this Agreement pursuant to sections 205(c) and 213(d) of the CAA, 42 U.S.C. §§ 7524(c) and 7547(d), and 40 C.F.R. § 1068.125.

Governing Law

4. This Agreement concerns Part A of Title II of the CAA, CAA §§ 202–219, 42 U.S.C. §§ 7521–7554, and related regulations. These laws aim to reduce emissions from mobile sources of air pollution. The Alleged Violations of Law, stated below, regard spark-ignition propulsion marine engines, specifically outboard engines, for which (beginning in model year 2010) 40 C.F.R. Part 1045 sets emission standards and 40 C.F.R. Part 1068 sets compliance provisions. This section of the Agreement summarizes the law that governs these allegations.
5. Starting with model year 2010, all outboard engines must satisfy air pollutant emission standards in 40 C.F.R. § 1045.103. These exhaust emission standards impose limits on emissions of hydrocarbon and oxides of nitrogen (HC + NO_x), and carbon monoxide.
6. The EPA’s certification program is designed to ensure that every engine introduced into United States commerce conforms in all material respects to an engine that has been approved by the EPA. The EPA approves engines by issuing certificates of conformity (COCs).
7. To obtain a COC, a manufacturer must submit a COC application to the EPA for each engine family and for each model year that it intends to introduce into United States commerce. 40 C.F.R. Part 1045, Subpart C (outlining certification requirements).
8. The COC application must include, among other things, a description of the basic parameters of the engine’s design and emission controls and a list of each distinguishable engine configuration that is within the engine family that will be covered by the COC. 40 C.F.R § 1045.205(a).

9. Once issued, a COC covers only those engines which conform in all material respects with the engine tested for and described in the COC application. 40 C.F.R. §§ 1068.101(a)(1)(i), 1068.103(a).
10. A manufacturer may not sell, offer for sale, introduce into commerce, deliver for introduction into commerce, or import (or cause any of the foregoing with respect to) a spark-ignition propulsion marine engine unless it is covered by a COC or is otherwise exempt from certification requirements. 40 C.F.R. § 1068.101(a)(1).
11. A person who violates 40 C.F.R. § 1068.101(a)(1) after January 12, 2009, is subject to a civil penalty of not more than \$37,500 for each violation. 40 C.F.R. § 1068.101(a)(1).

Factual Background

12. In 2013, Respondent manufactured 52 spark-ignition propulsion marine engines identified with model 1225D73EY, 1225D83EY, or 1225D84EY (Subject Engines). These are 2-stroke, 3-liter engines with maximum power of approximately 174 kilowatts.
13. The Subject Engines are regulated under 40 C.F.R. Part 1045.
14. Respondent had obtained COCs for 2012 and prior model years that covered engines with the same configuration as the Subject Engines. In model year 2013, however, Respondent decided to not seek a COC for these models.
15. The Subject Engines were labeled as lawful for “export only,” consistent with EPA regulations for engines manufactured in the United States but intended for sale outside the United States. 40 C.F.R. § 1068.230.

16. Respondent sold the Subject Engines to dealers and ultimate purchasers in the United States. Respondent subsequently reacquired three of the Subject Engines in order to prevent their sale and use in the United States.
17. Respondent represents that these sales occurred because the Subject Engines, although intended for foreign markets, were inadvertently added to a “close out” inventory list that was available for domestic purchase.
18. Respondent learned of the sale of one or more Subject Engine in April 2014. Respondent disclosed the sale of the Subject Engines to the EPA later that month.
19. Respondent revised its model year 2013 Averaging, Banking, and Trading (AB&T) end of year report to forfeit approximately 7,308 HC + NO_x emission credits.
 - (a) Under the AB&T program, emission credits represent surplus emission reductions that manufacturers achieve beyond those required under applicable emission standards. Manufacturers may certify engines that emit regulated pollutants at higher levels than the applicable emission standards provided that they consume sufficient emission credits to cover such excess emissions. So, AB&T credits are limited authorizations to emit regulated air pollution. *See* 40 C.F.R. Part 1045, Subpart H (outlining AB&T requirements for spark-ignition propulsion marine engines).
 - (b) Here, the Subject Engines emit approximately 28 grams per kilowatt-hour (g/kW-hr) whereas the applicable emission standard for the Subject Engines (under 40 C.F.R. § 1045.103) is approximately 16 g/kW-hr. As such, had Respondent certified the Subject Engines, it would have needed to consume approximately 7,308 HC + NO_x emission credits under the AB&T program. This amount of

credits represents 7,308 actual kilograms of HC + NO_x emissions. By forfeiting these credits, no manufacturer (including Respondent) may use them to certify and sell engines that exceed applicable emission standards.

Alleged Violations of Law

20. Respondent is a “person.” CAA § 302(e), 42 U.S.C. § 7602(e).
21. Respondent is a “manufacturer.” CAA § 216(1), 42 U.S.C. § 7550(1).
22. Respondent sold, offered for sale, introduced into commerce, or delivered for introduction into commerce (or caused the foregoing with respect to) the 52 new Subject Engines described above.
23. None of the Subject Engines was covered by a COC nor otherwise exempt from certification requirements.
24. Therefore, Respondent violated 40 C.F.R. § 1068.101(a) each time it sold, offered for sale, introduced into commerce, or delivered for introduction into commerce (or caused the foregoing with respect to) every one of the 52 Subject Engines.

Terms of Agreement

25. Respondent:
 - (a) agrees that the EPA has jurisdiction over this matter under section 205(c) of the CAA, 42 U.S.C. § 7524(c) and other provisions of law;
 - (b) admits to the Factual Background stated above;
 - (c) neither admits nor denies the Alleged Violations of Law stated above;
 - (d) agrees to pay the civil penalty stated below;

- (e) agrees to any conditions specified in this Agreement;
- (f) waives any right to any hearing, trial, adjudication, or proceeding (including review under section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1)) on any terms of this Agreement and on any issue of law or fact related to the Alleged Violations of Law stated above;
- (g) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action governed by federal law in a United States District Court to enforce this Agreement and to seek additional remedies for such breach;
- (h) agrees that Respondent may not delegate Respondent's duties under this Agreement to any other person without the written consent of the EPA, which may be granted, conditionally granted, or withheld at EPA's sole discretion;
- (i) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action;
- (j) acknowledges that this Agreement will be available to the public and agrees that it does not contain any confidential business information;
- (k) acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (see 31 U.S.C. § 7701);
- (l) certifies that the information it has supplied concerning this matter was at the time of submission, and is at the time of signature to this Agreement, truthful, accurate, and complete; and

- (m) acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

26. For purposes of this proceeding, the Parties each agree that:

- (a) this Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof;
- (b) this Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page may be detached from any counterpart and attached to any other counterpart of this Agreement;
- (c) its undersigned representative is fully authorized by the Party whom he or she represents to enter that Party into this Agreement, to execute it on behalf of that Party, and to legally bind that Party;
- (d) each Party's obligations under this Agreement constitute sufficient consideration for the other Party's obligations under this Agreement; additionally, the Parties agree that EPA's covenant not to sue Respondent (stated below) during the time period between the date that the EPA signs this Agreement and termination of the EPA's covenant (if and when this occurs) constitutes sufficient consideration for

the satisfactory completion of each and every one of Respondent's obligations under this Agreement; and

- (e) each Party will bear its own costs and attorney fees in the matter resolved by this Agreement.
27. Respondent agrees to pay to the United States a civil penalty of \$92,000 (the Civil Penalty). The Civil Penalty reflects a 75 percent reduction to the gravity component of what would otherwise have been the appropriate penalty in this matter had Respondent not disclosed the violations described above in satisfaction of conditions (2) through (9) of EPA's Audit Policy. Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violation, 65 Fed. Reg. 19,618, 19,625-26 (April 11, 2000).
28. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the date that the EPA signs this Agreement;
29. Respondent agrees to pay the Civil Penalty in the manner specified below:
- (a) Pay the EPA Penalty using any method, or combination of methods, provided on the following website:

http://www.epa.gov/cfo/finservices/payment_instructions.htm;
 - (b) Identify each and every payment with "AED/MSEB # 8129"; and
 - (c) Within 24 hours of payment, email proof of payment to Evan Belser at Belser.Evan@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with "AED/MSEB # 8129").

30. Respondent agrees to pay the following stipulated penalties to the United States in accordance with Paragraph 29, not more than 30 days after receipt of written demand by the EPA for such penalties: \$1,000 per day to the United States if and when it fails to timely pay the Civil Penalty in accordance with Paragraphs 27–29.

Effect of Agreement

31. By its signature below, the EPA covenants not to sue Respondent civil penalties for the Alleged Violations of Law stated above, but such covenant automatically terminates 90 calendar days following the date that the EPA signs this Agreement if on that date Respondent has failed to timely and satisfactorily pay the Civil Penalty required by Paragraphs 27–29 and pay any and all stipulated penalties demanded under Paragraph 30. If and when such covenant terminates, the United States at its election may seek to compel performance of the terms of this Agreement and seek other relief in a civil administrative or judicial action under the CAA or as a matter of contract.
32. Failure to pay the full amount of the Civil Penalty may subject Respondent to a civil action to collect any unpaid portion of the Civil Penalty and interest. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with the Civil Penalty, as described in the following Paragraph of this Agreement, Respondent must timely pay the Civil Penalty.
33. If Respondent fails to timely pay any portion of the Civil Penalty, the EPA may:
- (a) request that the Attorney General bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to

- 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10% quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the United States), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
 - (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.
34. Penalties paid pursuant to this Agreement are not deductible for federal tax purposes. 28 U.S.C. § 162(f).
35. This Agreement applies to and is binding upon the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.
36. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or

regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local certificate, license, or permit.

37. The EPA reserves the right to terminate its covenant provided by this Agreement if and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If and when such termination occurs, the EPA reserves the right to pursue legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.

In the Matter of:

Mercury Marine, a division of Brunswick Corporation,

Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB # 8129

By my signature, I execute this Agreement on behalf of Mercury Marine and thereby enter Mercury Marine into this Agreement and bind Mercury Marine to this Agreement.


Signature

7/21/15
Date

Printed Name: TODD LEMKE

Title: VICE PRESIDENT, GENERAL COUNSEL
BRUNSWICK CORPORATION, MERCURY MARINE DIVISION

Address: W6250 PIONEER ROAD, FOND DU LAC, WI 54935

Respondent's Federal Tax Identification Number: 36-0848180

In the Matter of:

Mercury Marine, a division of Brunswick Corporation,


Respondent.

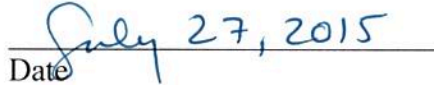
Administrative Settlement Agreement

Docket No.
AED/MSEB # 8129

By my signature, I execute this Agreement on behalf of the United States Environmental Protection Agency and thereby enter the EPA into this Agreement and bind the EPA to this Agreement.



 Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001


Date



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AIR ENFORCEMENT DIVISION, WASHINGTON, D.C.**

In the Matter of:

Makita Corporation,

Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB #8130

1. This is an Administrative Settlement Agreement (Agreement) between the United States Environmental Protection Agency (EPA) and Makita Corporation (Respondent) (collectively, Parties). The purpose of this Agreement is to resolve alleged violations of the Clean Air Act (CAA) and its regulations.
2. Respondent in this matter is Makita Corporation. Respondent is organized under the laws of Japan with facilities at 3-11-8 Sumiyoshi-cho, Anjo, Aichi 446-8502. Respondent designs and manufactures spark-ignition nonroad engines that power outdoor power equipment including blowers, cutters, saws, and pumps.
3. The EPA's delegated official and signatory to this Agreement is the Director of the Air Enforcement Division of the Office of Civil Enforcement of the Office of Enforcement and Compliance Assurance. The EPA enters this Agreement pursuant to sections 205(c) and 213(d) of the CAA, 42 U.S.C. §§ 7524(c) and 7547(d), and 40 C.F.R. § 1068.125.

Governing Law

4. This Agreement concerns Part A of Title II of the CAA, CAA §§ 202–219, 42 U.S.C. §§ 7521–7554, and related regulations. These laws aim to reduce emissions from mobile sources of air pollution. The Alleged Violations of Law, stated below, regard nonroad spark-ignition engines with power at or below 19 kilowatts (kW) for which 40 C.F.R. Part 1054 sets exhaust emission standards and 40 C.F.R. Part 1068 sets compliance provisions. The Alleged Violations of Law also regard equipment powered by nonroad spark-ignition engines with power at or below 19 kW for which 40 C.F.R. Part 1060 sets evaporative emission standards and 40 C.F.R. Part 1068 sets compliance provisions. This section of the Agreement summarizes the law that governs these allegations.
5. Starting with model year 2012, all nonroad spark-ignition engines with power at or below 19 kW must satisfy air pollutant exhaust emission standards in 40 C.F.R. Part 1054, Subpart B. These exhaust emission standards impose limits on emissions of hydrocarbons and oxides of nitrogen (HC + NO_x), and carbon monoxide (CO).
6. Starting with model year 2013, all nonroad spark-ignition engines with power at or below 19 kW must satisfy air pollutant evaporative emission standards in 40 C.F.R. Part 1060, Subpart B. 40 C.F.R. §§ 1054.15(a), 1054.110, 1054.112. These evaporative emission standards impose limits on emissions of evaporated fuel.
7. The EPA's certification program is designed to ensure that every engine and piece of equipment introduced into United States commerce conforms in all material respects to a design that has been approved by the EPA. The EPA approves engines and equipment by issuing certificates of conformity (COCs).
8. To obtain a COC, a manufacturer must submit a COC application to the EPA for each

engine family (for exhaust standards), each emission family (for evaporative standards), and for each model year that it intends to introduce into United States commerce.

40 C.F.R. Part 1054, Subpart C (outlining exhaust emission certification requirements);

40 C.F.R. Part 1060, Subpart C (outlining evaporative emission certification requirements).

9. The COC application must detail engine and equipment specifications and demonstrate with test data that the engine's exhaust emissions or that the equipment's evaporative emissions (depending on the type of COC application) satisfy applicable emission standards. 40 C.F.R §§ 1054.205, 1060.205.
10. Once issued, a COC covers only those engines or equipment produced during the period of time specified in the application for that COC. A COC covers no engine produced before the date that the manufacturer submitted the application for that COC nor any engine produced after December 31 of the calendar year for which the model year is named. 40 C.F.R. §§ 1054.201(a), 1060.201(a), 1068.103(a), (c), (d).
11. A manufacturer may not sell, offer for sale, introduce into commerce, deliver for introduction into commerce, or import (or cause any of the foregoing with respect to) a new nonroad spark-ignition engine, or a new piece of equipment powered by such an engine, unless it is covered by a COC or is otherwise exempt from certification requirements. 40 C.F.R. § 1068.101(a)(1).
12. A person who violates 40 C.F.R. § 1068.101(a)(1) after January 12, 2009, is subject to a civil penalty of not more than \$37,500 for each violation. 40 C.F.R. § 1068.101(a)(1).
13. Manufacturers shall establish and maintain records, and provide information the EPA may reasonably require to determine if that manufacturer has acted or is acting in

compliance with the CAA and its regulations. CAA § 208(a), 42 U.S.C. § 7542(a).

Among such mandatory records, manufacturers must complete the appropriate EPA declaration form before importing any engines or equipment and keep these forms for five years. 40 C.F.R. § 1068.301(d). The appropriate form for importing a nonroad spark-ignition engine, or a piece of equipment powered by such an engine, is EPA Standard Form 3520-21. <http://www.epa.gov/otaq/imports/forms-resources.htm> (last visited August 13, 2014).

14. One's failure to make and maintain required records is prohibited, and subjects that person to a civil penalty of not more than \$37,500 for each day that person is in violation. 40 C.F.R. § 1068.101(a)(2).

Factual Background

15. In model year 2012, Respondent held exhaust emission COCs for (among others) the following engine families: CFNXS.0254GA, CFNX.0344GA, and CFNXS.0765GA. Respondent also held model year 2012 evaporative emission COCs for (among others) the following emission families: CFNXPTANKBA0, CFNXPTANKBB0, CFNXPTANKBC0, CFNXPTANKBD0, and CFNXPTANKJA0. Respondent timely obtained these COCs to cover many of its model year 2012 blowers, cutters, saws, and pumps.
16. However, Respondent obtained neither exhaust emission COCs nor evaporative emission COCs for certain model year 2013 engines (used to power blowers, cutters, saws, and pumps) that it manufactured and introduced into commerce. These engines' horsepower ranged from approximately 0.69 to 2.84 horsepower. Similarly, Respondent obtained

neither exhaust emission COCs nor evaporative emission COCs for its model year 2014 blowers, cutters, saws, and pumps until approximately May 29, 2014. On or about May 29, 2014, the EPA issued Respondent COCs to cover engines and equipment produced after that date (including EFNXS.0254GA, EFNX.0344GA, EFNXS.0765GA, EFNXPTANKBA0, EFNXPTANKBB0, EFNXPTANKBC0, EFNXPTANKBD0, and EFNXPTANKJA0).

17. Respondent represents that each model of blowers, cutters, saws, and pumps affected by this lapse in certification were identical in all material respects between model years 2012, 2013, and 2014. As such, Respondent obtained the above-listed model year 2014 COCs by *carrying over* the emission test data from model year 2012 pursuant to 40 C.F.R. §§ 1054.235(d), 1060.235(e). Respondent likewise represents that it would have been appropriate to obtain model year 2013 COCs based on carrying over the same 2012 emission test data.
18. Respondent represents that it first learned of the above-described lapse in certification on or about April 28, 2014. On May 1, 2014, and in subsequent communications, Respondent disclosed to the EPA the existence of and details concerning the lapse in certification and other potential noncompliance.
19. In response to the lapse in certification, Respondent prepared and submitted applications for the model year 2014 COCs listed above. Additionally, Respondent stopped approximately 8,863 affected products from being sold to ultimate purchasers in the United States even though these products had already been imported. Respondent has exported each of these products to a country other than Canada, Mexico, and Territories of the United States.

20. Respondent represents that it has implemented corrective actions to prevent lapses in certification and other compliance problems. Such actions include the implementation of a new standard operating procedure by which engine and equipment production cannot begin until the existence of the requisite COCs is formally confirmed. Such actions also include employee training and product inspection.
21. Respondent has committed to honor the emissions related warranty for each affected product just as though the certification lapse did not occur.
22. On or about July 11, 2014, Respondent disclosed that neither Respondent nor its subsidiary, Makita U.S.A., Inc., completed EPA Standard Form 3520-21 for imported engines and equipment in 2013 and 2014. These engines were manufactured by Respondent and Makita USA Inc. acted as the importer of record.

Alleged Violations of Law

23. Respondent is a “person.” CAA § 302(e), 42 U.S.C. § 7602(e).
24. Respondent is a “manufacturer.” CAA § 216(1), 42 U.S.C. § 7550(1).
25. Between approximately January 2013 and May 2014, Respondent sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to) approximately 22,313 new nonroad spark-ignition engines with power at or below 19 kW that were not covered by an exhaust emission COC in violation of 40 C.F.R. § 1068.101(a)(1).
26. Between approximately January 2013 and May 2014, Respondent sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to) approximately 22,313 new pieces of equipment

powered by nonroad spark-ignition engines with power at or below 19 kW that were not covered by a evaporative emission COC in violation of 40 C.F.R. § 1068.101(a)(1).

27. Between approximately January 2013 and May 2014, Respondent failed to complete and keep appropriate EPA declarations forms, namely EPA Standard Form 3520-21, for approximately 8,046 engines or pieces of equipment in violation of 40 C.F.R. § 1068.101(a)(2).

Terms of Agreement

28. Respondent:
- (a) agrees that the EPA has jurisdiction over this matter under section 205(c) of the CAA, 42 U.S.C. § 7524(c) and other provisions of law;
 - (b) admits to the Factual Background stated above;
 - (c) neither admits nor denies the Alleged Violations of Law stated above;
 - (d) agrees to pay the civil penalty stated below;
 - (e) agrees to any conditions specified in this Agreement;
 - (f) waives any right to any hearing, trial, adjudication, or proceeding (including review under section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1)) on any terms of this Agreement and on any issue of law or fact related to the Alleged Violations of Law stated above;
 - (g) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action governed by federal law in a United States District Court to enforce this Agreement and to seek additional remedies for such breach;
 - (h) agrees that Respondent may not delegate Respondent's duties under this

Agreement to any other person without the written consent of the EPA, which may be granted, conditionally granted, or withheld at EPA's sole discretion;

- (i) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action;
- (j) acknowledges that this Agreement will be available to the public and agrees that it does not contain any confidential business information or personally identifiable information;
- (k) acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (see 31 U.S.C. § 7701);
- (l) certifies that the information it has supplied concerning this matter was at the time of submission, and is at the time of signature to this Agreement, true, accurate, and complete; and
- (m) acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

29. For purposes of this proceeding, the Parties each agree that:

- (a) this Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof;
- (b) this Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the

counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Agreement;

- (c) its undersigned representative is fully authorized by the Party whom he or she represents to enter that Party into this Agreement, to execute it on behalf of that Party, and to legally bind that Party;
- (d) each Party's obligations under this Agreement constitute sufficient consideration for the other Party's obligations under this Agreement; additionally, the Parties agree that EPA's covenant not to sue Respondent (stated below) during the time period between the date that the EPA signs this Agreement and termination of the EPA's covenant (if and when this occurs) constitutes sufficient consideration for the satisfactory completion of each and every one of Respondent's obligations under this Agreement; and
- (e) each Party will bear its own costs and attorney fees in the matter resolved by this Agreement.

30. Respondent agrees to pay to the United States a civil penalty of \$76,000 (the Civil Penalty). The Civil Penalty reflects a 75 percent reduction to the gravity component of what would otherwise have been the appropriate penalty in this matter had Respondent not disclosed the violations described above in satisfaction of conditions (2) through (9) of EPA's Audit Policy. Incentives for Self-Policing: Discovery, Disclosure, Correction

and Prevention of Violation, 65 Fed. Reg. 19,618, 19,625-26 (April 11, 2000).

31. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the date that the EPA signs this Agreement;
32. Respondent agrees to pay the Civil Penalty in the manner specified below:
 - (a) Pay the EPA Penalty using any method, or combination of methods, provided on the following website:

http://www.epa.gov/cfo/finservices/payment_instructions.htm;
 - (b) Identify each and every payment with "AED/MSEB # 8130"; and
 - (c) Within 24 hours of payment, email proof of payment to Evan Belser at belser.evan@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with "AED/MSEB # 8130").
33. Respondent acknowledges that the United States Department of Homeland Security's Bureau of Customs and Border Protection may assess penalties (that are separate and in addition to the Civil Penalty) based on the facts stated in this Agreement.
34. Respondent agrees to pay the following stipulated penalties to the United States in accordance with Paragraph 32, not more than 30 days after receipt of written demand by the EPA for such penalties: \$1,000 per day to the United States if and when it fails to timely pay the Civil Penalty in accordance with Paragraph 32.

Effect of Agreement

35. By its signature below, the EPA covenants not to sue Respondent for civil penalties for the

Alleged Violations of Law stated above, but such covenant automatically terminates 90 calendar days following the date that the EPA signs this Agreement if on that date Respondent has failed to timely and satisfactorily pay the Civil Penalty required by Paragraphs 30–32 and pay any and all stipulated penalties demanded under Paragraph 34. If and when such covenant terminates, the United States at its election may seek to compel performance of the terms of this Agreement and seek other relief in a civil judicial action under the CAA or as a matter of contract.

36. Failure to pay the full amount of the Civil Penalty may subject Respondent to a civil action to collect any unpaid portion of the Civil Penalty and interest. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with the Civil Penalty, as described in the following Paragraph of this Agreement, Respondent must timely pay the Civil Penalty.
37. If Respondent fails to timely pay any portion of the Civil Penalty, the EPA may:
 - (a) request that the Attorney General bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10% quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
 - (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the United States), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds,

40 C.F.R. Part 13, Subparts C and H; and

- (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

38. Penalties paid pursuant to this Agreement are not deductible for federal tax purposes.

28 U.S.C. § 162(f).

39. This Agreement applies to and is binding upon the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.

40. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local certificate, license, or permit.

41. The EPA reserves the right to terminate its covenant provided by this Agreement if and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If and when such termination occurs, the EPA reserves the right to pursue legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.

In the Matter of:

Makita Corporation,

Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB #8130

By my signature, I execute this Agreement on behalf of Makita Corporation and thereby enter Makita Corporation into this Agreement and bind Makita Corporation to this Agreement.

加藤 友康
Signature

June, 19, 2015
Date

Printed Name: TOMOYASU KATO

Title: Director, Corporate officer, R&D Headquarters

Address: 3-11-8, Sumiyoshi-cho, Anjo, Aichi 446-8502 JAPAN

Respondent's Federal Tax Identification Number: 13-2672211

In the Matter of:


Makita Corporation,

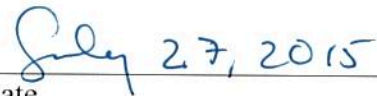
Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB #8130

By my signature, I execute this Agreement on behalf of the United States Environmental Protection Agency and thereby enter the EPA into this Agreement and bind the EPA to this Agreement.


for Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001


Date



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AIR ENFORCEMENT DIVISION, WASHINGTON, D.C.**

In the Matter of:

Brookville Equipment Corporation,

Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB #8191

1. This is an Administrative Settlement Agreement (Agreement) between the United States Environmental Protection Agency (EPA) and Brookville Equipment Corporation (Respondent) (collectively, Parties). The purpose of this Agreement is to resolve alleged violations of the Clean Air Act (CAA) and its regulations by Respondent.
2. Respondent in this matter is Brookville Equipment Corporation. Respondent is a corporation organized under the laws of the Commonwealth of Pennsylvania with an office at 175 Evans Street, Brookville, PA 15825. Respondent manufactures equipment of various kinds, including diesel-electric passenger locomotives.
3. The delegated official of the EPA and signatory to this Agreement is the Director of the Air Enforcement Division of the Office of Civil Enforcement of the Office of Enforcement and Compliance Assurance. The EPA enters this Agreement pursuant to sections 205(c) and 213(d) of the CAA, 42 U.S.C. §§ 7524(c) and 7547(d), and 40 C.F.R. § 1068.125.

Governing Law

4. This Agreement concerns Part A of Title II of the CAA, CAA §§ 202–219, 42 U.S.C. §§ 7521–7554, and related regulations. These laws aim to reduce emissions from mobile sources of air pollution. The Alleged Violations of Law, stated below, regard freshly manufactured locomotives for which 40 C.F.R. Part 1033 sets exhaust emission standards and 40 C.F.R. Part 1068 sets compliance provisions. This section of the Agreement summarizes the law that governs these allegations.
5. Model year 2012–2014 locomotives must satisfy Tier 3 air pollutant exhaust emission standards in 40 C.F.R. Part 1033, Subpart B. These exhaust emission standards impose limits on emissions of hydrocarbons, oxides of nitrogen, carbon monoxide, and particulate matter. 40 C.F.R. § 1033.101.
6. The EPA's certification program is designed to ensure that every locomotive introduced into United States commerce conforms in all material respects to a design that has been approved by the EPA. The EPA approves locomotives by issuing certificates of conformity (COCs).
7. To obtain a COC, a manufacturer must submit a COC application to the EPA for each engine family and for each model year that it intends to introduce into United States commerce. 40 C.F.R. Part 1033, Subpart C (outlining emission certification requirements).
8. The COC application must describe the locomotives' specifications and demonstrate with test data that its exhaust emissions satisfy applicable emission standards. 40 C.F.R. § 1033.205.

9. Once issued, a COC covers only those locomotives produced during the period of time specified in the application for that COC, and covers no engine produced before the date that the manufacturer submitted the application for that COC nor any engine produced after December 31 of the calendar year for which the model year is named. 40 C.F.R. §§ 1033.201(a), 1068.103(a), (c), (d).
10. A manufacturer may not sell, offer for sale, introduce into commerce, deliver for introduction into commerce, or import (or cause any of the foregoing with respect to) a new locomotive, unless it is covered by a COC or is otherwise exempt from certification requirements. 40 C.F.R. § 1068.101(a)(1).
11. A person who violates 40 C.F.R. § 1068.101(a)(1) after January 12, 2009, is subject to a civil penalty of not more than \$37,500 for each violation. 40 C.F.R. § 1068.101(a)(1).

Factual Background

12. On or about February 2011, Respondent entered a contract to manufacture diesel-electric passenger locomotives to sell to the South Florida Regional Transportation Authority (SFRTA).
13. Respondent manufactured 12 diesel-electric passenger locomotives (Subject Locomotives) under this contract. The Subject Locomotives were fully assembled by May 2014.
14. Respondent delivered 11 of the 12 Subject Locomotives to SFRTA between September 2013 and May 2014. SFRTA received them, and conditionally accepted them for on-site inspection and testing pursuant to the contract.

15. In February and March 2014, for the first time, Respondent submitted to the EPA's Office of Transportation and Air Quality (OTAQ) an application for a model year 2014 COC to cover the Subject Locomotives. During its review of this application, OTAQ requested that Respondent provide additional information in support of its application. Respondent provided some but not all of the requested information in April and May 2014. Respondent provided the remainder of the requested information in December 2014. In December 2014, OTAQ requested more information necessary for its review, and Respondent provided this information in December 2014 and January 2015. On December 31, 2014, the COC application was incomplete and OTAQ had not issued the requested COC. Since December 31, 2014, consistent with law and guidance, OTAQ has not issued any model year 2014 COCs.
16. On or about December 18, 2014, in a meeting between OTAQ and Respondent concerning the pending application, Respondent for the first time informed the EPA that 11 of the 12 Subject Locomotives had been delivered to SFRTA. Prior to December 18, 2014, Respondent had not informed anyone at the EPA that any Subject Locomotives had been delivered.
17. Respondent has not delivered the twelfth and final Subject Locomotive to SFRTA as of the time of its signature of this Agreement. Respondent intends to deliver this last Subject Locomotive, but agreed with the EPA that it would first resolve the Alleged Violations of Law and deliver it consistent with this Agreement.
18. Respondent has applied supplemental labels to each Subject Locomotive. Each label is adjacent to the existing emission control information labels that are required by 40 C.F.R. § 1033.135, will be durable throughout the Subject Engines' useful life, and cannot be

removed without being destroyed or defaced. Each label states: “This locomotive is not EPA certified, but is legal for sale pursuant to the terms of a settlement agreement with the US EPA, Docket AED/MSEB #8191. Brookville Equipment Corporation has committed to perform any and all requirements under the Clean Air Act and applicable regulations as though it was a certified model year 2014 locomotive.”

Alleged Violations of Law

19. Respondent violated 40 C.F.R. § 1068.101(a)(1) when it sold, offered for sale, introduced into commerce, or delivered for introduction into commerce (or caused the foregoing with respect to) the 12 Subject Locomotives. The Subject Locomotives are not covered by a COC because the EPA never issued the COC for which Respondent applied, and because Respondent produced the majority of the Subject Locomotives before the date that Respondent submitted the application for that COC.

Terms of Agreement

20. Respondent:
 - (a) agrees that the EPA has jurisdiction over this matter under section 205(c) of the CAA, 42 U.S.C. § 7524(c);
 - (b) admits to the Factual Background stated above;
 - (c) neither admits nor denies the Alleged Violations of Law stated above;
 - (d) agrees to pay the civil penalty stated below;
 - (e) agrees to any conditions specified in this Agreement;

- (f) waives any right to any hearing, trial, adjudication, or proceeding (including review under sections 205(c) and 307(b)(1) of the CAA, 42 U.S.C. §§ 7534(c) and 7607(b)(1)) on any terms of this Agreement and on any issue of law or fact related to the Alleged Violations of Law and Factual Background stated above;
- (g) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action governed by federal law in a United States District Court to enforce this Agreement and to seek additional remedies for such breach;
- (h) agrees that Respondent may not delegate Respondent's duties under this Agreement to any other person without the written consent of the EPA, which may be granted, conditionally granted, or withheld at the EPA's unfettered discretion;
- (i) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action;
- (j) acknowledges that this Agreement will be available to the public and agrees that it does not contain any confidential business information or personally identifiable information;
- (k) acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (see 31 U.S.C. § 7701);
- (l) certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and

- (m) acknowledges that there are significant penalties for knowingly submitting false or misleading information, including the possibility of fines and imprisonment (see 18 U.S.C. § 1001).
21. For purposes of this proceeding, the Parties, desiring to settle this matter, each agree that:
- (a) this Agreement is in the public interest and is an appropriate way to resolve this matter;
 - (b) this Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof;
 - (c) this Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Agreement;
 - (d) its undersigned representative is fully authorized by the Party whom he or she represents to bind that Party to this Agreement and to execute it on behalf of that Party;
 - (e) each Party's obligations under this Agreement constitute sufficient consideration for the other Party's obligations under this Agreement; additionally, the Parties agree that the EPA's covenant not to sue Respondent (stated below) during the

time period between the date that the EPA signs this Agreement and termination of the EPA's covenant (if and when this occurs) constitutes sufficient consideration for the satisfactory completion of each and every one of Respondent's obligations under this Agreement; and

- (f) each Party will bear its own costs and attorney fees in the matter resolved by this Agreement.
22. Respondent agrees to pay to the United States a civil penalty of \$202,000 (the Civil Penalty).
23. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the date that the EPA signs this Agreement. The EPA agrees to provide to Respondent at the email address provided on Respondent's signature page, below, a copy of the executed Agreement within 5 calendar days of that date.
24. Respondent agrees to pay the Civil Penalty in the manner specified below:
- (a) Pay the Civil Penalty using any method provided on the following website:
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>;
 - (b) Identify each and every payment with "AED/MSEB #8191"; and
 - (c) Within 24 hours of payment, email proof of payment to Evan Belser at belser.evan@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with "AED/MSEB #8191").

25. Respondent commits to perform any and all responsibilities it would otherwise have had if the Subject Locomotives had been covered by an EPA-issued COC. This includes all post-certification compliance obligations required of the certifying manufacturer that are specified in 40 C.F.R. Parts 1033 and 1068, including requirements concerning in-use testing, defect reporting, warranty, remanufacturing, and recordkeeping and reporting.
26. Respondent agrees to perform Production Line Testing according to 40 C.F.R. Part 1033, Subpart D on one of the Subject Locomotives that was not already tested for emissions. Respondent agrees to perform this testing, and submit the report required by 40 C.F.R. § 1033.320(e) within 120 calendar days following the date that the EPA signs this Agreement. Respondent agrees to simultaneously send a copy of the report to Evan Belser at belser.evan@epa.gov.
27. Respondent agrees to pay the following stipulated penalties to the EPA in the manner specified by Paragraph 24, not more than 30 days after receipt of written demand by the EPA for such penalties:
 - (a) \$3,000 per day if and when it fails to timely pay the Civil Penalty, or provide proof thereof, in accordance with Paragraph 24; and
 - (b) \$1,000 per day if and when it fails to timely complete the terms required by Paragraph 26.

Effect of Agreement

28. By its signature below, the EPA covenants not to sue Respondent for civil penalties for the Alleged Violations of Law stated above, but such covenant automatically terminates: 90 days after the date that the EPA signs this Agreement if on that date Respondent has

failed to pay the Civil Penalty required by Paragraphs 22–24 or pay any and all stipulated penalties demanded under Paragraph 27(a); or 180 days after the date that the EPA signs this Agreement if on that date Respondent has failed to complete the non-penalty terms of settlement required by Paragraph 26 or pay any and all stipulated penalties demanded under Paragraph 27(b). If and when such covenant terminates, the United States at its election may seek to compel performance of the terms of this Agreement and seek other relief in a civil administrative or judicial action under the CAA, as a matter of contract, or both.

29. If Respondent fails to timely pay any portion of the Civil Penalty, the EPA may:
- (a) request that the Attorney General bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10% quarterly nonpayment penalty (see 42 U.S.C. § 7413(d)(5));
 - (b) refer the debt to a credit reporting agency or a collection agency (see 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33);
 - (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the United States), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (see 40 C.F.R. Part 13, Subparts C and H); and
 - (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (see 40 C.F.R. § 13.17).

30. Penalties paid pursuant to this Agreement are not deductible for federal tax purposes.
28 U.S.C. § 162(f).
31. This Agreement applies to and is binding upon the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent or if they continue a substantive portion of Respondent's business that is regulated under the CAA. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.
32. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local certificate, license, or permit.
33. The EPA reserves the right to terminate its covenant provided by this Agreement if and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was or is materially false or inaccurate. If and when such termination occurs, the EPA reserves the right to pursue, assess, and enforce legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.

In the Matter of:

Brookville Equipment Corporation,

Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB #8191

By my signature, I execute this Agreement on behalf of Brookville Equipment Corporation and thereby enter Brookville Equipment Corporation into this Agreement and bind Brookville Equipment Corporation to this Agreement.

Signature Marion H. Van Fossom

13 July 2015
Date

Printed Name: Marion H. Van Fossom

Title: President

Address: 175 Evans Street/PO Box 130, Brookville, PA 15825

Respondent's Federal Tax Identification Number: 251259897

Email address for receipt of copy of Agreement: mvanfossom@brookvillecorp.com

In the Matter of:


Brookville Equipment Corporation,

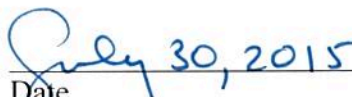
Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB #8191

By my signature, I execute this Agreement on behalf of the United States Environmental Protection Agency and thereby enter the EPA into this Agreement and bind the EPA to this Agreement.


for Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001


Date

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of:

YAMAHA MOTOR CORP., U.S.A.

Respondent.

Docket No.
CAA-HQ-2015-8146

CONSENT AGREEMENT

Preliminary Statement

1. This is a civil administrative penalty assessment proceeding instituted under section 205(c)(1) of the Clean Air Act (CAA), 42 U.S.C. § 7524(c)(1). The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
2. Complainant in this matter is the United States Environmental Protection Agency (EPA). On the EPA's behalf, Phillip A. Brooks, Director, Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized by lawful delegation to institute and settle civil administrative penalty assessment proceedings under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1). EPA Delegation 7-6-A (Aug. 4, 1994); Office of Enforcement and Compliance Assurance Redeflegation 7-6-A (March 5, 2013); Office of Civil Enforcement Redeflegation 7-6-A (March 5, 2013).
3. Respondent in this matter is Yamaha Motor Corp., U.S.A. Respondent is a corporation organized under the laws of the State of California with an office at 6555

Katella Avenue, Cypress, California 90630. Yamaha Motor Corp., U.S.A., is a wholly-owned subsidiary of the Yamaha Motor Corporation, Ltd., a public corporation based in Shizuoka, Japan.

4. Respondent holds EPA certificates of conformity and imports highway motorcycles, recreational vehicles, and small nonroad spark-ignition (SI) gasoline engines manufactured by Yamaha Motor Corporation, Ltd.
5. The EPA and Respondent, having agreed to settle this action, consent to the entry of this Consent Agreement and the attached Final Order without taking testimony and without adjudication of any issues of law or fact herein, and agree to comply with the terms of this Consent Agreement and the attached Final Order.

Jurisdiction

6. This Consent Agreement is entered into under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22 (Consolidated Rules).
7. The EPA may administratively assess a civil penalty if the penalty sought is less than \$320,000. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1), 40 C.F.R. §§ 19.4, 90.1006(c)(1), 1068.125(b); Civil Monetary Penalty Inflation Adjustment Rule, 78 Fed. Reg. 66,643 (November 6, 2013) (codified at 40 C.F.R. § 19.4); *see* 40 C.F.R. § 90.1006(a)(6) (defining a violation of 40 C.F.R. § 90.1003(a) as being a violation of CAA §§ 203 and 213(d), 42 U.S.C. §§ 7522 and 7547(d)).

8. The Administrator and the Attorney General jointly determined that this matter, although it involves a penalty amount greater than \$320,000, is appropriate for administrative penalty assessment. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1); 40 C.F.R. §§ 90.1006(c), 1068.125(b).
9. The Environmental Appeals Board is authorized to issue consent orders memorializing settlements between the EPA and Respondent resulting from administrative enforcement actions under the CAA, and to issue final orders assessing penalties under the CAA. 40 C.F.R. § 22.4(a)(1); EPA Delegation 7-41-C.
10. The Consolidated Rules provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order. 40 C.F.R. §§ 22.13(b), 22.18(b).

Governing Law

11. This proceeding arises under Part A of Title II of the CAA, CAA §§ 202–219, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution, including hydrocarbons, oxides of nitrogen, and carbon monoxide. The Alleged Violations of Law, stated below, regard on-highway motorcycles, recreational vehicles, and small SI nonroad engines (collectively, the “Subject Vehicles and Engines”). What follows is the governing law for each type of vehicle and engine.

12. General definitions:

- (a) “Person” includes individuals, corporations, partnerships, associations, states, municipalities, and political subdivisions of a state. CAA § 302(e), 42 U.S.C. § 7602(e).
- (b) “Manufacturer” means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce. CAA § 216(1), 42 U.S.C. § 7550(1).

13. Highway motorcycles:

- (a) The term “motor vehicle” means any self-propelled vehicle designed for transporting persons or property on a street or highway. CAA § 216(2), 42 U.S.C. § 7550(2).
- (b) The term “motorcycle” refers to highway motorcycles and means a motor vehicle that weighs less than or equal to 793 kilograms (1,749 pounds) with a headlight, tail-light, stop-light, and two or three wheels. 40 C.F.R. § 86.402-98.
- (c) The vehicles identified herein as “highway motorcycles” meet the definition of “motorcycle” at 40 C.F.R. § 86.402-98, are a type of “motor vehicle,” and

are subject to the emission standards and other requirements under 40 C.F.R. Part 86.

- (d) Model year 2006 and later highway motorcycles must satisfy air pollutant emission standards in 40 C.F.R. §§ 86.401-2006 and 86.410-2006. These emission standards impose limits on emissions of oxides of nitrogen, carbon monoxide, hydrocarbons, evaporative emissions, and impose other requirements.
- (e) To demonstrate that a highway motorcycle satisfies emission and other standards, it must be covered by an EPA-issued certificate of conformity (COC). 40 C.F.R. § 86.407-78.
- (f) To obtain a COC, a manufacturer must submit a COC application to the EPA for each engine family and each model year that it intends to manufacture and sell in the United States. 40 C.F.R. § 86.416-80.
- (g) An application for a COC must provide an identification and description of the vehicles covered by the application, including, among other things, a description of any emissions control system and any adjustable parameters, a list of the model names included in the engine family, and test results from a prototype emissions data vehicle. 40 C.F.R. § 86.416-80(a)(2)(i). Each COC states that it covers only the models it names.
- (h) Each COC states that it “does not cover vehicles sold, offered for sale, introduced, or delivered for introduction into commerce in the U.S. prior to the effective date of the [COC].” Each COC also states that it covers only

those vehicles produced during the model year production period stated on the COC. 40 C.F.R. § 86.437-78(a)(2)(ii).

- (i) The EPA issues COCs on whatever terms the EPA deems necessary to ensure that any new motorcycle covered by the COC will meet the requirements of the CAA and its regulations. 40 C.F.R. § 86.437-78(a)(2)(ii), (b)(3). By the terms on the face of each COC, a COC covers “only those vehicles which conform, in all material respects, to the design specifications that applied to those vehicles described in the documentation required by 40 C.F.R. Part 86.”
- (j) The manufacturer of any motorcycle subject to the emission standards set forth in 40 C.F.R. Part 86 must provide information to the EPA that the EPA reasonably requires to determine whether the manufacturer or other person has acted or is acting in compliance with the CAA and its regulations. CAA § 208(a), 42 U.S.C. § 7542(a).
- (k) Manufacturers are prohibited from selling, offering for sale, or introducing or delivering for introduction into commerce—or causing any of the foregoing—any new motor vehicle or new motor vehicle engine unless the vehicle or engine is covered by a COC issued by the EPA under regulations prescribed by the CAA. CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1).
- (l) All persons are prohibited from importing or causing another to import a new motor vehicle or new motor vehicle engine into the United States unless that new motor vehicle or new motor vehicle engine is covered by an EPA-issued COC. CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1).

(m) Anyone who, between March 15, 2004, and January 12, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported into the United States a highway motorcycle that was not covered by a COC or was improperly labeled—or anyone who caused any of the foregoing—is subject to a civil penalty of up to \$32,500 for each such vehicle. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. This penalty amount increased from \$32,500 to \$37,500 for violations which occur after January 12, 2009. 40 C.F.R. § 19.4.

14. Recreational vehicles:

- (a) The term “recreational vehicle” includes all-terrain vehicles and off-highway motorcycles. 40 C.F.R. § 1051.801.
- (b) The term “all-terrain vehicle” is defined as a nonroad vehicle that either:
 - (a) is designed to travel on four low-pressure tires, has a seat designed to be straddled by the operator and handlebars for steering control, and is intended for use by a single operator and no other passengers; or
 - (b) has three or more wheels and one or more seats, is designed for operation over rough terrain, is intended primarily for transportation, and has a maximum vehicle speed of 25 miles per hour or higher. 40 C.F.R. § 1051.801.
- (c) The term “off-highway motorcycle” is defined as a two-wheeled vehicle with a nonroad engine and a seat. 40 C.F.R. § 1051.801.
- (d) Each vehicle identified herein as a “recreational vehicle” or “all-terrain vehicle” or “off-highway motorcycle” meets the definition of such vehicle and is subject to the emission standards and other requirements set forth in

40 C.F.R. Parts 1051 and 1068. The requirements of 40 C.F.R. Parts 1051 and 1068 also apply to new engines used in recreational vehicles. 40 C.F.R. §§ 1051.1(a), 1068.1(8).

- (e) Model year 2006 and later new recreational vehicles and engines with displacement less than or equal to 1000 cubic centimeters (cc), maximum engine power less than or equal to 30 kilowatts (kW), and maximum vehicle speed higher than 25 miles per hour must satisfy air pollutant emission standards in 40 C.F.R. §§ 1051.101–1051.115. 40 C.F.R. § 1051.1. These emission standards impose limits on emissions of oxides of nitrogen, carbon monoxide, hydrocarbon, and exhaust opacity.
- (f) To demonstrate that an imported recreational vehicle satisfies emission standards, it must be covered by an EPA-issued COC. 40 C.F.R. § 1068.301(b); *see* 40 C.F.R. Part 1051 Subpart C (outlining COCs and the application requirements).
- (g) An application for a COC must provide an identification and description of the vehicles covered by the application including, among other things, a description of any emissions control system and any adjustable parameters, a list of the model names included in the engine family, and test results from a prototype emissions data vehicle. 40 C.F.R. § 1051.205. Each COC states that it covers only the models it names.
- (h) An application for a COC must describe all adjustable parameters and other adjustments. 40 C.F.R. §§ 1051.115(c), 1051.205(q). An “adjustable parameter” is any device, system, or element of design that someone can

adjust (including those which are difficult to access) and that, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation. 40 C.F.R. § 1051.801. “Other adjustments” include changes to a recreational vehicle’s air-fuel ratio that can be made by an experienced mechanic in less than one hour and with a few parts whose total cost is under \$50 (in 2001 dollars). 40 C.F.R. § 1051.115(d).

- (i) Each COC states that it “does not cover vehicles sold, offered for sale, introduced, or delivered for introduction into commerce in the U.S. prior to the effective date of the [COC].” *See also* 40 C.F.R. § 1068.103(c).
- (j) Each COC states that it covers “only those vehicles which conform, in all material respects, to the design specifications that applied to those vehicles described in the documentation required by 40 C.F.R. Part 1051.” *See also* 40 C.F.R. § 1068.103(a).
- (k) Manufacturers are prohibited from selling, offering for sale, introducing into commerce, or delivering for introduction into commerce in the United States a model year 2006 or later recreational vehicle—or causing any of the foregoing—unless that recreational vehicle is covered by a COC. CAA §§ 203(a)(1), 213(d), 42 U.S.C. §§ 7522(a)(1), 7547(d); 40 C.F.R. § 1068.101(a)(1); *see* CAA § 216(1), 42 U.S.C. § 7550(1), 40 C.F.R. § 1068.30 (defining “manufacturer” to include importers).
- (l) All persons are prohibited from importing or causing another to import a new recreational vehicle into the United States unless that vehicle is covered by an EPA-issued COC. 40 C.F.R. § 1068.101(a)(5).

(m) Anyone who, between March 15, 2004, and January 12, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported into the United States a recreational vehicle that was not covered by a COC or was improperly labeled—or anyone who caused any of the foregoing—is subject to a civil penalty of up to \$32,500 for each such vehicle. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. §§ 19.4, 1068.101(a)(1), (b)(6), (c). This penalty amount increased from \$32,500 to \$37,500 for violations which occur after January 12, 2009. 40 C.F.R. § 19.4.

15. Small SI nonroad engines:

- (a) Model year 1997 and later new nonroad SI engines with gross power output at or below 19 kW, certain new engines with a gross power above 19 kW, and new engines below 50 cc used in motorcycles must satisfy air pollutant emission standards in 40 C.F.R. §§ 90.103, 90.104, and 1054.101. 40 C.F.R. §§ 90.1(a)–(c), 90.2, 1054.1; *see* 40 C.F.R. §§ 90.3 and 1054.801 (defining “nonroad engine”). These emission standards impose limits on emissions of oxides of nitrogen, carbon monoxide, hydrocarbon, and exhaust capacity.
- (b) To demonstrate that a small SI nonroad engine satisfies emission standards, the engine must be covered by an EPA-issued COC. 40 C.F.R. §§ 90.106(a), 1054.201; *see* 40 C.F.R. §§ 90.106, 90.107, 1054.201, 1054.205 (outlining COCs and the application requirements).
- (c) An application for a COC must include an identification and description of the engines covered by the application. 40 C.F.R. §§ 90.107(d)(1) and 1054.205. Each COC states that it covers only the models it names.

- (d) Each COC states that it covers: “only those new small nonroad engines which conform in all material respects to the design specifications that applied to those engines described in the documentation required by 40 C.F.R. Part 90” or “only those new small nonroad engines which conform in all material respects to the design specifications that applied to those engines described in the documentation required by 40 C.F.R. Part 1054.”
- (e) An engine manufacturer must affix at the time of manufacture a permanent and legible label that contains specified information. The EPA label must contain, among other things, the month and year of manufacture of the engine. 40 C.F.R. §§ 90.114 and 1054.135.
- (f) Pursuant to 40 C.F.R. § 1054.625(j), an engine manufacturer who produces engines for an equipment manufacturer under the Transition Program for Equipment Manufacturers (TPEM) must meet the labeling requirements of 40 C.F.R. § 90.114, but add the following statement instead of the compliance statement in 40 C.F.R. § 90.114(b)(7): THIS ENGINE MEETS U.S. EPA EMISSION STANDARDS UNDER 40 C.F.R. § 1054.525 AND MUST BE USED ONLY UNDER THOSE FLEXIBILITY PROVISIONS.
- (g) Manufacturers are prohibited from selling, offering for sale, introducing or delivering for introduction into commerce, or importing (or causing the foregoing acts with respect to) a model year 1997 or later nonroad small SI nonroad engine unless it is covered by a COC. CAA §§ 203(a)(1), 213(d), 42 U.S.C. §§ 7522(a)(1), 7547(d); 40 C.F.R. §§ 90.1003(a)(1), 1068.101(a)(1); *see* CAA § 216(1), 42 U.S.C. § 7550(1) (defining

“manufacturer” to include importers); 40 C.F.R. § 90.3 (defining “engine manufacturer” to include importers); 40 C.F.R. § 1068.30 (defining “manufacturer” to include importers).

- (h) Sections 203(a)(4)(A) and/or 213(d) of the CAA, 42 U.S.C. §§ 7522(a)(4)(A) and/or 7545(d), prohibits a manufacturer from selling or leasing a new certified vehicle/engine, unless the manufacturer has affixed the required EPA label to the engine in accordance with section 207(c)(3)(C) of the CAA, 42 U.S.C. § 7541(c)(3)(C). Pursuant to § 7541(c)(3)(C), the manufacturer is required to indicate by means of the EPA label permanently affixed to the vehicle/engine that such vehicle/engine is covered by a COC. The EPA label must also contain any other information that the EPA has prescribed by regulations. 40 C.F.R. §§ 90.1003(a)(4)(ii), 1068.101(a)(1).
- (i) Anyone who, between March 15, 2004, and January 12, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported into the United States a small SI nonroad engine that was not covered by a COC or was improperly labeled—or anyone who caused any of the foregoing—is subject to a civil penalty of up to \$32,500 for each such engine. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. §§ 19.4, 90.1006, 1068.101(a)(1), (b)(6), (c). This penalty amount increased from \$32,500 to \$37,500 for violations which occur after January 12, 2009. 40 C.F.R. § 19.4.

16. Production Line Testing and Reports Requirement:

- (a) Sections 203(a)(2) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a)(2) and 7547(d), and the applicable regulations prohibit, among other things, any person from failing to perform tests and make reports. For failing to perform tests, *see* 40 C.F.R. §§ 90.1003(a)(2)(iii), 91.1103(a)(iii), 91.1104(a), and 1068.101(a)(3). For failing to make reports, *see* 40 C.F.R. §§ 90.1003(a)(2)(i), 91.1103(a)(2)(i), 91.1104(a), and 1068.101(a)(2).
- (b) The applicable regulations specify the test period and when the reports must be submitted to the EPA. Where the projected U.S.-directed production volume is 1,600 or greater, and the annual production period is 12 months, the test periods are consecutive quarters (3 months), and the production line test (PLT) reports must be submitted to the EPA within 30 days of the end of the test period or within 45 days of the end of the test period if SI propulsion marine engines. *See* 40 C.F.R. §§ 1045.310, 1051.310, and 1054.310.
- (c) For engine families with projected U.S.-directed production volume below 1,600, the whole model year constitutes a single test period, and the PLT report is due within 30 days and must be submitted to the EPA.
- (d) For model year 2009 and earlier small SI nonroad engines, the manufacturer must, beginning each model year, from the end of the assembly line, randomly select engines from each engine family for PLTs at a rate of 1%. *See* 40 C.F.R. §§ 90.706 and 91.506. For small nonroad SI engines, the PLT report must be submitted to the EPA within 45 days of the end of the each quarter. *See* 40 C.F.R. §§ 90.709(e), 1054.345.

(e) Anyone who, between March 15, 2004, and January 12, 2009, failed to keep or maintain mandatory records or failed to provide the EPA with information reasonably required to assess their compliance with the CAA, are subject to a civil penalty up to \$32,500 for each day they are in violation. CAA §§ 203(a)(2)(A), 205(a), 208(a), 42 U.S.C. §§ 7522(a)(2)(A), 7524(a), 7542(a); 40 C.F.R. §§ 19.4, 1068.101(a)(2). This penalty amount increased from \$32,500 to \$37,500 for violations since January 12, 2009. 40 C.F.R. § 19.4.

Stipulated Facts

17. The Subject Vehicles and Engines identified in Appendix A to this Consent Agreement are highway motorcycles, recreational vehicles, and small SI nonroad engines, as defined above, and are subject to the emission standards and compliance provisions of the CAA and its regulations. CAA §§ 203, 213(d), 42 U.S.C. §§ 7522, 7547(d).
18. Respondent is a “person” as defined above.
19. Respondent is a “manufacturer” as defined above.
20. Respondent imported all of the Subject Vehicles and Engines into the United States.
21. Respondent claimed that every one of the Subject Vehicles and Engines identified in Appendix A was covered by the COC specified for that vehicle or engine in Appendix A.
22. In July 2010, authorized inspectors from the EPA inspected a highway motorcycle labeled as belonging to engine family 9YMXC.049GCA. EPA alleges that the

catalytic converter on the vehicle did not conform to the specifications included in the COC application for the engine family.

23. In September 2010, authorized inspectors from the EPA inspected four models of Yamaha recreational vehicles and highway motorcycles labeled as belonging to engine families BYMXC1.85GEB, BYMXC.942GEA, BYMXX.686BDB, and BYMXX.558BDA at the port of Long Beach. For each vehicle inspected, the model names on the vehicles were not identified completely on the applicable COC.
24. Additionally, inspectors found that one recreational vehicle labeled as belonging to engine family BYMXX.124AAD had a carburetor with a replaceable main jet that did not conform to the specifications in the corresponding COC application because the jetting chart was not included in the COC application. Subsequent to the importation, Yamaha submitted a running change to EPA which added a jetting chart to the application for certification.
25. In a letter dated December 28, 2010, the EPA issued to Respondent a Request for Information under section 208(a) of the CAA, 42 U.S.C. § 7524(a) (§ 208 Request). This § 208 Request required Respondent to provide, among other things, information related to the manufacturing, testing, importation and warranty pertaining to all vehicles for which Respondent sought or was issued a COC for all vehicles from model years 2007 and later produced under a COC issued to Respondent and imported into the United States.
26. In March 2011, Respondent provided the EPA with some of the information requested by the § 208 Request.

27. Based on Respondent's responses to the § 208 Request, the EPA identified highway motorcycles and recreational vehicles that were labeled as belonging to engine families 9YMXC.0492EA, 9YMXC.125GCA, AYMXC.049GCA, AYMXC.0492EA, and 9YMXX.421BAA that were manufactured and imported with catalysts that did not conform to certain catalyst specifications included in the COC application for the engine family that allegedly covered the vehicles. Respondent subsequently provided documentation and test data from the catalyst manufacturers which demonstrated compliance for model years 2011 and 2012.
28. In December 2010, at a Home Depot Store in Atlanta, Georgia, authorized inspectors from the EPA inspected a 6800W gasoline generator with a Yamaha engine labeled as belonging to engine family 9YMXS.3572EE that did not list the date of manufacture on the emission control information label, but instead listed "DOM: *****".
29. In June 2011, in response to an EPA inquiry, Respondent reported a failure to conduct required PLT testing for engine family 9YMXS.3572EE.
30. In May 2012, Techtronics International submitted a disclosure to the EPA regarding Yamaha engines that were imported bearing certification labels under engine family CYMXS.3012EC instead of the required TPEM exemption labels.
31. In June 2012, the EPA requested information from Respondents regarding PLT reports for certain engine families.
32. Based on the information received from Respondent, the EPA identified a total of 10 small spark-ignited engine families for which PLT reports were either not submitted or not timely submitted to the EPA as required (9YMXS.1711EA, AYMXS.1711EA,

9YMXS.3572EB, AYMXS.3572EB, 9YMXS.3572EE, AYMXS.3572EE,
9YMXS.080BEA, 9YMXS.3572EA, AYMXS.3572EF, AYMXS.0805EA).

Alleged Violations of Law

33. Highway Motorcycle Certification Violations: The EPA alleges that Respondent sold, offered for sale, introduced or delivered for introduction into commerce, or imported (or caused the foregoing acts with respect to) 15,281 uncertified highway motorcycles (the “Subject Highway Motorcycles”), identified in Appendix A, in violation of section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1). Specifically, this includes:

- (a) 1,027 highway motorcycles that the EPA alleges have model names that are not identified on the COCs that purportedly cover them (515 of those motorcycles are allegedly from engine family BYMXC1.85GEB, and 512 motorcycles are allegedly from engine family BYMXC.942GEA).
- (b) 14,254 highway motorcycles that the EPA alleges are equipped with catalysts that are materially different from the catalysts described in the application for the COC that purportedly covers them. Specifically, this includes:
 - (1) 2,320 highway motorcycles allegedly from engine family 9YMXC.049GCA, that have catalysts that materially differ in length and active material loading.
 - (2) 4,462 highway motorcycles allegedly from engine family 9YMXC.125GCA, that have catalysts that materially differ in length and part number.

- (3) 7,056 highway motorcycles allegedly from engine family 9YMXC.0492EA, that have catalysts that materially differ in active material loading and manufacturer.
- (4) 80 highway motorcycles allegedly from engine family AYMXC.049GCA, that have catalysts that materially differ in length and cell density.
- (5) 336 highway motorcycles allegedly from engine family AYMXC.0492EA, that have catalysts that materially differ in cell density and volume.

34. Recreational Vehicle Certification Violations: The EPA alleges that Respondent sold, offered for sale, introduced or delivered for introduction into commerce, or imported (or caused the foregoing acts with respect to) 19,020 uncertified recreational vehicles (the “Subject Recreational Vehicles”), identified in Appendix A, in violation of sections 203(a)(1) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a)(1) and 7547(d), and of 40 C.F.R. § 1068.101(a)(1). Specifically, this includes:

- (a) 10,895 recreational vehicles that the EPA alleges have model names that are not identified on the COCs that purportedly cover them (5,588 of those recreational vehicles are allegedly from engine family BYMXX.686BDB and 5,307 recreational vehicles are allegedly from engine family BYMXX.558BDB).
- (b) 1,959 recreational vehicles allegedly from the engine family BYMXX.124AAD, which the EPA alleges have carburetors with replaceable

carburetor jets that do not conform to the design specifications submitted in the application for certification.

(c) 6,166 recreational vehicles allegedly from the engine family

9YMX.421BAA, which the EPA alleges have catalysts that do not conform to the design specifications submitted in the application for certification.

35. Small SI Nonroad Spark-Ignition Engine Labeling Violations: The EPA alleges that Respondent sold or leased (or caused the foregoing acts with respect to) 20,915 small SI nonroad engines with nonconforming labels identified in Appendix A. The EPA alleges that the importation and sale, or causing the importation and sale, of these improperly labeled small ignition-spark engines constitutes violations of section 203(a)(4)(a) of the CAA, 42 U.S.C. § 7522(a)(4)(a) and the small nonroad spark-ignition engine regulations, 40 C.F.R. §§ 90.1003(a)(4)(ii) and 1068.101(a)(1).

Specifically, these violations include:

(a) 20,045 small SI nonroad engines that the EPA alleges have emission control information labels that do not contain the required date of manufacture.

(b) 870 small SI nonroad engines that the EPA alleges are lacking the requisite TPEM exemption labels.

36. Production Line Testing and Reports Violations for Small SI Nonroad Engines: The EPA alleges that Respondent failed to submit and/or failed to timely submit PLT reports for ten small SI nonroad engine families including: 9YMXS.1711EA, AYMXS.1711EA, 9YMXS.3572EB, AYMXS.3572EB, 9YMXS.3572EE, AYMXS.3572EE, 9YMXS.080BEA, 9YMXS.3572EA, AYMXS.3572EF, and AYMXS.0805EA.

Terms of Agreement

37. For the purpose of this proceeding, Respondent:
- (a) admits that the EPA has jurisdiction over this matter as stated in Paragraphs 6 through 10 above;
 - (b) admits to the stipulated facts stated in Paragraphs 17 through 32 above;
 - (c) neither admits nor denies the alleged violations of law stated in Paragraphs 33 through 36 above;
 - (d) consents to the assessment of a civil penalty as stated in Paragraph 38 below;
 - (e) consents to the issuance of any specified compliance or corrective action order;
 - (f) waives any right to contest the alleged violations of law stated in Paragraphs 33 through 36 above; and
 - (g) waives its rights to appeal the Final Order accompanying this Consent Agreement.
38. Respondent must pay to the United States a civil penalty of \$950,000 (the Civil Penalty).
39. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the issuance of the attached Final Order (i.e., the effective date of this Consent Agreement and attached Final Order).
40. Respondent agrees to pay the Civil Penalty in the manner specified below:

(a) Pay the EPA Penalty using any method, or combination of methods, provided on the following website:

http://www.epa.gov/cfo/finservices/payment_instructions.htm;

(b) Identify each and every payment with “Docket No. CAA-HQ-2015-8146”;
and

(c) Within 24 hours of payment, email proof of payment to Jacqueline R. Werner at werner.jacqueline@epa.gov (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with “Docket No. CAA-HQ-2015-8146”).

41. Respondent and Complainant acknowledge that, notwithstanding the Civil Penalty, the U.S. Department of Homeland Security’s Bureau of Customs and Border Protection (CBP) may attempt to assess separate penalties related to the alleged importation violations of law involving the Subject Vehicles and Engines and that Respondent, by executing this Consent Agreement, does not waive any defenses or legal remedies available to it, or toll any claims, should CBP attempt to assess any penalties.

42. Failure to pay the full amount of the penalty assessed under this Consent Agreement may subject Respondent to a civil action to collect any unpaid portion of the proposed civil penalty and interest. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with such civil penalty, as described in

the following Paragraph of this Consent Agreement, Respondent must timely pay the penalty.

43. If Respondent fails to timely pay any portion of the penalty assessed by the attached Final Order, the EPA may:

- (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (see 40 C.F.R. Part 13, Subparts C and H); and
- (d) suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

44. Under 28 U.S.C. § 162(f), penalties paid pursuant to this Consent Agreement are not deductible for federal tax purposes.

45. Respondent agrees that the time period from the effective date of this Consent Agreement until September 15, 2015 (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any

action brought by Complainant on any claims (the “Tolled Claims”) set forth in Alleged Violations of Law section of this Consent Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

Effect of Consent Agreement and Attached Final Order

46. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent’s liability for federal civil penalties for the violations and facts specifically alleged above.
47. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
48. Complainant and the Respondent each certify that its undersigned representative is fully authorized by the party whom he or she represents to enter into the terms and conditions of the Consent Agreement, to execute it on behalf of that party, and to legally bind that party on whose behalf he or she signs this Consent Agreement. Both parties agree that each party’s obligations under this Consent Agreement and Final Order constitute sufficient consideration for the other party’s obligations under this Consent Agreement and Final Order.

49. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and attached Final Order will be available to the public, and agrees that they do not contain any confidential business information.
50. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
51. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response, and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
52. The EPA reserves the right to revoke this Consent Agreement and accompanying settlement penalty if and to the extent the EPA finds, after signing this Consent Agreement, that any information provided by Respondent was or is materially false or inaccurate, and the EPA reserves the right to pursue, assess, and enforce legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.
53. By signing this Consent Agreement, Complainant and Respondent agree to bear their own costs and attorney's fees in the action resolved by this Consent Agreement and attached Final Order.

54. If Respondent fails to comply with any provision contained in this Consent Agreement and Final Order, Respondent waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in the appropriate United States District Court to compel compliance with the Consent Agreement and attached Final Order or to seek an additional penalty for such noncompliance.
55. The Parties agree to submit this Consent Agreement to the Environmental Appeals Board with a request that it be incorporated into a Final Order.
56. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Environmental Appeals Board and filing with the Hearing Clerk.

APPENDIX A: Subject Vehicles and Engines

Alleged Engine Family	Alleged Violation	Alleged Violation Type
BYMXC1.85GEB	Uncertified: The model and brand names were not identified on the COC.	Model Name
BYMXC.942GEA	Uncertified: The model and brand names were not identified on the COC.	
BYMXX.686BDB	Uncertified: The model and brand names were not identified on the COC.	
BYMXX.558BDB	Uncertified: The model and brand names were not identified on the COC.	
BYMXX.124AAD	Uncertified: The YFM125RAW model ATV had a carburetor with a replaceable main jet and pilot jet.	Nonconforming carburetor
9YMXX.421BAA	Uncertified: Hot tube catalyst did not conform to loading in the application for certification.	Nonconforming catalyst
9YMXC.049GCA	Uncertified: Honeycomb catalyst was shorter and contained only a fraction of the precious metal loading described in the application for certification.	
9YMXC.125GCA	Uncertified: Hot tube catalyst did not conform to length, part number, and loading in the application for certification.	
9YMXC.0492EA	Uncertified: Honeycomb catalyst did not conform to specifications (grams/liter, manufacturer) in the application for certification.	
AYMXC.049GCA	Uncertified: Honeycomb catalyst did not conform to specifications (cell density, length) in the application for certification.	
AYMXC.0492EA	Uncertified: Honeycomb catalyst did not conform to specifications (cell density, volume) in the application for certification.	Label
CYMXS.9012EC	Label violation: These Yamaha Class 2 small SI engines installed in pressure washers were labeled as certified under CYMXS.9012EC but are missing supplemental TPDM labels (44 engines still in inventory will be relabeled).	
9YMXS.3572EE	Label violation: No date of manufacture (**** instead).	

The foregoing Consent Agreement In the Matter of Yamaha Motor Corporation, U.S.A. Docket No. CAA-HQ-2015-8146, is Hereby Stipulated, Agreed, and Approved for Entry.

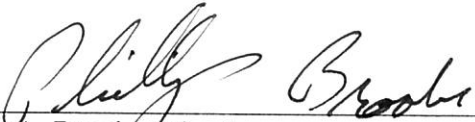
For Yamaha Motor Corporation, U.S.A.:




Yamaha Motor Corporation, U.S.A.
6555 Katella Avenue
Cypress, California 90630

July 22, 2015
Date


For Complainant:



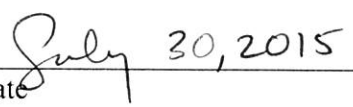
Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (2242A)
Washington, DC 20460-0001



Date

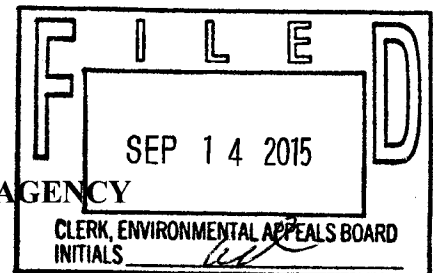


Jacqueline R. Werner, Associate Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (2242A)
Washington, DC 20460-0001



Date

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



In re:

Yamaha Motor Corporation, U.S.A.

)
)
) Docket No. CAA-HQ-2015-8146
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FINAL ORDER

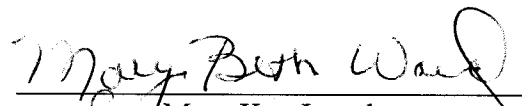
Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. With respect to ratifying the penalty assessment for the recordkeeping violations set forth in this Consent Agreement, the Board does not rely on any interim, nonpublic penalty policy. Rather, the Board relies on the statutory factors set forth in the Clean Air Act § 205(c)(2), 42 U.S.C. § 7524(c)(2),

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.

ENVIRONMENTAL APPEALS BOARD¹

Dated: 9/14/15


for Mary Kay Lynch
Environmental Appeals Judge

¹ The three-member panel ratifying this matter is composed of Environmental Appeals Judges Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of Yamaha Motor Corporation, U.S.A., Docket No. CAA-HQ-2015-8146, were filed and copies of the same were sent to the following persons in the manner indicated:

**By First Class Certified Mail/
Return Receipt Requested:**

Granta Y. Nakayama
King & Spaulding LLP
1700 Pennsylvania Ave., N.W.
Suite 200
Washington, DC 20006

By Interoffice Mail:

Jacqueline R. Werner
Air Enforcement Division, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code 2242A
Washington, DC 20460

Dated: SEP 14 2015



Annette Duncan
Secretary

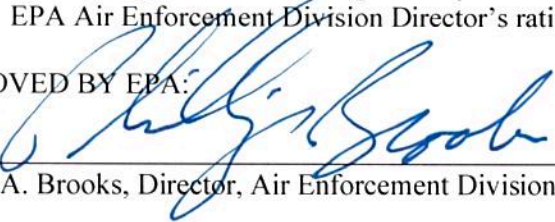
Enclosure
CLEAN AIR ACT MOBILE SOURCE EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO. CAA-15-8251

Respondent: Mattoon Rural King Supply, Inc.
4216 Dewitt Avenue
Mattoon, Illinois 61938

1. The parties enter into this Clean Air Act Mobile Source Expedited Settlement Agreement (Agreement) in order to settle the civil violations discovered as a result of the inspections specified in Table 1, attached, incorporated into this Agreement by reference. The civil violations that are the subject of this Agreement are described in Table 2, attached, incorporated into the Agreement by reference, regarding the vehicles/engines specified therein.
2. Respondent admits to being subject to the Clean Air Act (CAA) and its associated regulations and that the United States Environmental Protection Agency (EPA) has jurisdiction over the Respondent and the Respondent's conduct described in Table 2. Respondent does not contest the findings detailed therein, and waives any objections Respondent may have to the EPA's jurisdiction.
3. Respondent consents to the payment of a penalty in the amount of \$5,000, further described in Table 3, attached, incorporated into this Agreement by reference. Respondent agrees to follow the instructions in "CAA Mobile Source Expedited Settlement Agreement Instructions," attached, incorporated into this Agreement by reference. Respondent certifies that the required remediation, detailed in Table 3, has been carried out.
4. By its first signature below, the EPA approves the findings resulting from the inspection and alleged violations set forth in Tables 1 and 2. Upon signing and returning this Agreement to the EPA, Respondent consents to the terms of this Agreement without further notice. Respondent acknowledges that this Agreement is binding on the parties signing below, and becomes effective on the date of the EPA Air Enforcement Division Director's ratifying signature.

APPROVED BY EPA:


Phillip A. Brooks, Director, Air Enforcement Division

Date: 8/4/2015

APPROVED BY RESPONDENT:


Name (print): Lauren Goss

Title (print): Director of Logistics

Signature: Lauren Goss

Date: 9/2/15

RATIFIED BY EPA:


for Phillip A. Brooks, Director, Air Enforcement Division

Date: 9/24/15

Table 1 - Inspection Information

Entry Date:		Inspection Date:	
April 30, 2015		May 7, 2015	
Inspection Location:		Entry Number	
U.S. CBP's Channel Distribution Corporation		C B D - 0 0 1 7 4 9 2 - 9	
Address:			
950 Supreme Drive			
City:		Inspectors:	
Itasca		Reza R. Bagherian, Greg Orehowsky, Colin Wang	
State:	Zip Code:	EPA Approving Official:	
IL	60106	Phillip A. Brooks	
CBP Agent:		EPA Enforcement Contact:	
Gregory Swat		Reza R. Bagherian, (312) 886-0674	

Table 2 - Description of Violation and Vehicles/Engines

The model "R100-III" generators containing non-road engines (Subject Engines) were inspected by the EPA on May 7, 2015 at the port of Chicago. The ECI label on the inspected engine indicates that it is certified under engine family FCRPS.0991GA. The EPA issued the COC for engine family FCRPS.0991GA to Chongqing Rato Power Manufacturing Corporation, with an effective date of September 17, 2014. During the inspection, the EPA inspectors obtained a catalyst sample from the inspected model Subject Engine, and sent it to an EPA laboratory for analysis. Physical and chemical examination of the muffler assembly for engine family FCRPS.0991GA has revealed that the design of the catalyst contained therein is materially different from the catalyst design specified in the application for the COC for this engine family. Because the catalyst does not conform to the precious metal specifications in the application for the COC for engine family FCRPS.0991GA, the EPA concludes that the Subject Engines are not covered by the COC for this engine family. The Subject Engines were therefore imported in violation of 40 C.F.R. § 1068.101(a)(1).

Equipment Description	Alleged Engine Family	Manufacturer	Model Year	Quantity
R100-III 98.5 cc Non-road Engines	FCRPS.0991GA	Chongqing Rato Power Manufacturing Corporation	2015	200

Table 3 - Penalty and Required Remediation

Penalty	\$5,000
Required Remediation	Mattoon Rural King Supply, Inc must export or destroy all 200 Subject Engines remaining in inventory and provide the EPA with a report documenting this remediation.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AIR ENFORCEMENT DIVISION, WASHINGTON, D.C.

In the Matter of:

Forest River, Inc.

Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB # 8256

1. This is an Administrative Settlement Agreement (Agreement) between the United States Environmental Protection Agency (EPA) and Forest River, Inc. (Respondent) (collectively, Parties). The purpose of this Agreement is to resolve alleged violations of the Clean Air Act (CAA) and its regulations by Respondent.
2. Respondent in this matter is Forest River, Inc. Respondent is a corporation organized under the laws of the State of Indiana with an office at 55470 CR 1, PO Box 3030, Elkhart, Indiana. Among other things, Respondent manufactures motor vehicles such as motorhomes, travel trailers, and coaches.
3. The delegated official of the EPA and signatory to this Agreement is the Director of the Air Enforcement Division of the Office of Civil Enforcement of the Office of Enforcement and Compliance Assurance. The EPA enters this Agreement pursuant to sections 205(c) of the CAA, 42 U.S.C. §§ 7524(c).

Governing Law

4. This Agreement concerns Part A of Title II of the CAA, CAA §§ 202–219, 42 U.S.C. §§ 7521–7554, and related regulations. These laws aim to reduce emissions from mobile

sources of air pollution, including hydrocarbons, carbon monoxide, oxides of nitrogen, particulate matter, and greenhouse gases. The Alleged Violations of Law, stated below, regard motor vehicles, specifically heavy-duty motor vehicles, for which 40 C.F.R. Parts 85 and 86 set emission standards and section 203 of the CAA, 42 U.S.C. § 7522, sets compliance provisions. This section of the Agreement summarizes the law that governs these allegations.

5. To ensure that every motor vehicle introduced into United States commerce satisfies the applicable emission standards, the EPA runs a certification program. This certification program is designed to ensure that every motor vehicle sold in the United States conforms in all material respects to a vehicle that has been approved by the EPA. The EPA approves vehicles by issuing certificates of conformity (COC).
6. To obtain a COC, a manufacturer must submit a COC application to the EPA for each test group and each model year that it intends to manufacture and sell in the United States.
7. “For incomplete light-duty trucks and incomplete heavy-duty vehicles, a certificate covers only those new motor vehicles which, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification.” 40 C.F.R. § 86.1848(c)(4).
8. The CAA prohibits manufacturers of new motor vehicles from selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing (and no person may cause any of the foregoing with respect to) any new motor vehicle unless that vehicle is covered by an EPA-issued COC. CAA § 203(a)(1), 42 U.S.C.

§ 7522(a)(1).

9. Anyone who, since January 12, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to) a motor vehicle that was not covered by a COC in violation of section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), is subject to a civil penalty of up to \$37,500 for each such vehicle. 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

Factual Background

10. In model years 2014 and 2015, Respondent purchased certain Ram ProMaster 3500 cab chassis from FCA US LLC (previously Chrysler Group LLC). Respondent subsequently assembled these incomplete heavy-duty motor vehicles into complete class C coaches, namely the Rockport, Dynamax, and Coachmen models. Respondent then sold the complete vehicles to its dealers.
11. The cab chassis were purportedly covered by the EPA-issued COC for test groups ECRXD03.65V0 (model year 2014, gasoline fueled), ECRXD03.05VV (model year 2014, diesel fueled), FCRXD03.65V0 (model year 2015, gasoline fueled), or FCRXD03.05VV (model year 2015, diesel fueled). The applications for these COCs, and the labels on the cab chassis, specified that the maximum curb weight for these vehicles was 5,150 pounds (model year 2014) or 6,150 pounds (model year 2015).
12. On or about July 22, 2015, Respondent disclosed to the EPA that it had sold the above-described vehicles, and that the curb weight of the complete vehicle exceeded the maximum curb weight stated in the applications for the COCs that purportedly cover them.

13. As of the time of its signature of this Agreement, Respondent has not delivered to its dealers or any person approximately 130 complete vehicles that have been in its possession since discovering the compliance problem in July 2015. Respondent intends to deliver these vehicles, but agreed with the EPA that it would first resolve the Alleged Violations of Law and deliver them consistent with this Agreement.
14. Respondent has applied supplemental labels to the above-described approximately 130 vehicles. Each label states: "This motor vehicle is not EPA certified, but is legal for sale at up to 8,250 lbs. curb weight pursuant to the terms of a settlement agreement with the US EPA, Docket AED/MSEB # 8256."

Alleged Violations of Law

15. Respondent is a "person." CAA § 302(e), 42 U.S.C. § 7602(e).
16. Respondent is a "manufacturer." CAA § 216(1), 42 U.S.C. § 7550(1).
17. Respondent sold, offered for sale, introduced into commerce, or delivered for introduction into commerce (or caused the foregoing with respect to):
 - (a) 388 heavy-duty, gasoline fueled motor vehicles purportedly covered by the COCs for test groups ECRXD03.65V0 (model year 2014) or FCRXD03.65V0 (model year 2015); and
 - (b) 12 heavy-duty, diesel fueled motor vehicles purportedly covered by the COCs for test groups ECRXD03.05VV (model year 2014) or FCRXD03.05VV (model year 2015).
18. These vehicles are subject to the CAA's certification requirements and are not exempt.
19. Each of these 400 vehicles exceeded the maximum curb weight stated in the applications for the COCs that purportedly cover them. As such, the vehicles are not covered by these

COCs. 40 C.F.R. § 86.1848(c)(4). No other COC covers these vehicles.

20. Therefore, Respondent violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), each time it sold, offered for sale, introduced into commerce, or delivered for introduction into commerce (or caused the foregoing with respect to) every one of these 400 motor vehicles.

Terms of Agreement

21. Respondent:
- (a) agrees that the EPA has jurisdiction over this matter under section 205(c) of the CAA, 42 U.S.C. § 7524(c);
 - (b) admits to the Factual Background stated above;
 - (c) neither admits nor denies the Alleged Violations of Law stated above;
 - (d) agrees to pay the civil penalty stated below;
 - (e) agrees to any conditions specified in this Agreement;
 - (f) waives any right to any hearing, trial, adjudication, or proceeding (including review under sections 205(c) and 307(b)(1) of the CAA, 42 U.S.C. §§ 7534(c) and 7607(b)(1)) on any terms of this Agreement and on any issue of law or fact related to the Alleged Violations of Law and Factual Background stated above;
 - (g) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action governed by federal law in a United States District Court to enforce this Agreement and to seek additional remedies for such breach;
 - (h) agrees that Respondent may not delegate Respondent's duties under this Agreement to any other person without the written consent of the EPA, which

may be granted, conditionally granted, or withheld at EPA's unfettered discretion;

- (i) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action;
 - (j) acknowledges that this Agreement will be available to the public and agrees that it does not contain any confidential business information or personally identifiable information;
 - (k) acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (see 31 U.S.C. § 7701);
 - (l) certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and
 - (m) acknowledges that there are significant penalties for knowingly submitting false or misleading information, including the possibility of fines and imprisonment (see 18 U.S.C. § 1001).
22. For purposes of this proceeding, the Parties, desiring to settle this matter, each agree that:
- (a) this Agreement is in the public interest and is an appropriate way to resolve this matter;
 - (b) this Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof;
 - (c) this Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the

counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Agreement;

- (d) its undersigned representative is fully authorized by the Party whom he or she represents to bind that Party to this Agreement and to execute it on behalf of that Party;
 - (e) each Party's obligations under this Agreement constitute sufficient consideration for the other Party's obligations under this Agreement; additionally, the Parties agree that EPA's covenant not to sue Respondent (stated below) during the time period between the date that the EPA signs this Agreement and termination of the EPA's covenant (if and when this occurs) constitutes sufficient consideration for the satisfactory completion of each and every one of Respondent's obligations under this Agreement; and
 - (f) each Party will bear its own costs and attorney fees in the matter resolved by this Agreement.
23. Respondent agrees to pay to the United States a civil penalty of \$130,000 (the Civil Penalty). The Civil Penalty reflects a 75 percent reduction to the gravity component of what would otherwise have been the appropriate penalty in this matter had Respondent not disclosed the violations described above in satisfaction of conditions (2) through (9) of EPA's Audit Policy. Incentives for Self-Policing: Discovery, Disclosure, Correction

and Prevention of Violation, 65 Fed. Reg. 19,618, 19,625-26 (April 11, 2000).

24. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the date that the EPA signs this Agreement. EPA agrees to provide to Respondent at the email address provided on Respondent's signature page, below, a copy of the executed Agreement within 5 calendar days of that date.
25. Respondent agrees to pay the Civil Penalty in the manner specified below:
 - (a) Pay the Civil Penalty using any method provided on the following website:
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>;
 - (b) Identify each and every payment with "AED/MSEB # 8256"; and
 - (c) Within 24 hours of payment, email proof of payment to Evan Belser at belser.evan@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with "AED/MSEB # 8256").
26. Respondent agrees to pay the following stipulated penalties to the EPA in the manner specified by Paragraph 25 not more than 30 days after receipt of written demand by the EPA for such penalties: \$5,000 per day to the United States if and when it fails to timely pay the Civil Penalty, or provide proof thereof, in accordance with Paragraph 23–25.

Effect of Agreement

27. By its signature below, the EPA covenants not to sue Respondent for civil penalties for the Alleged Violations of Law stated above, but such covenant automatically terminates 90 days after the date that the EPA signs this Agreement if on that date Respondent has failed to timely and satisfactorily pay the Civil Penalty required by Paragraphs 23–25 or pay any and all stipulated penalties demanded under Paragraph 26. If and when such covenant terminates, the United States at its election may seek to compel performance of the terms of this Agreement and seek other relief in a civil administrative or judicial action under the CAA, as a matter of contract, or both.
28. If Respondent fails to timely pay any portion of the Civil Penalty, the EPA may:
- (a) request that the Attorney General bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10% quarterly nonpayment penalty (see 42 U.S.C. § 7413(d)(5));
 - (b) refer the debt to a credit reporting agency or a collection agency (see 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33);
 - (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the United States), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (see 40 C.F.R. Part 13, Subparts C and H); and
 - (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (see 40 C.F.R. § 13.17).

29. Penalties paid pursuant to this Agreement are not deductible for federal tax purposes.
28 U.S.C. § 162(f).
30. This Agreement applies to and is binding upon the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent or if they continue a substantive portion of Respondent's business that is regulated under the CAA. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.
31. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local certificate, license, or permit.
32. The EPA reserves the right to terminate its covenant provided by this Agreement if and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was or is materially false or inaccurate. If and when such termination occurs, the EPA reserves the right to pursue, assess, and enforce legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.

In the Matter of:

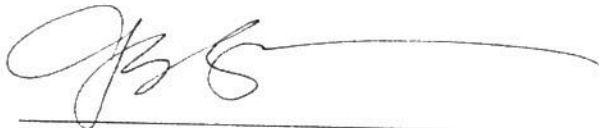
Forest River, Inc.

Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB # 8256

By my signature, I execute this Agreement on behalf of Forest River, Inc., and thereby enter Forest River, Inc., into this Agreement and bind Forest River, Inc., to this Agreement.



Justin Savage, Partner
Hogan Lovells
555 13th St., N.W.
Washington, DC 20004
202-637-5558
Justin.Savage@hoganlovells.com

9.10.15
Date

Respondent's Federal Tax Identification Number: 20-3284366

In the Matter of:


Forest River, Inc.

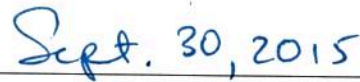
Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB # 8256

By my signature, I execute this Agreement on behalf of the United States Environmental Protection Agency and thereby enter the EPA into this Agreement and bind the EPA to this Agreement.


for Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001


Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AIR ENFORCEMENT DIVISION, WASHINGTON, D.C.

In the Matter of:

Winnebago Industries, Inc.

Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB # 8255

1. This is an Administrative Settlement Agreement (Agreement) between the United States Environmental Protection Agency (EPA) and Winnebago Industries, Inc. (Respondent) (collectively, Parties). The purpose of this Agreement is to resolve alleged violations of the Clean Air Act (CAA) and its regulations by Respondent.
2. Respondent in this matter is Winnebago Industries, Inc. Respondent is a corporation organized under the laws of the State of Iowa with an office at 605 W. Crystal Lake Road, Forest City, Iowa 50436. Among other things, Respondent manufactures motor vehicles such as motorhomes, travel trailers, and coaches.
3. The delegated official of the EPA and signatory to this Agreement is the Director of the Air Enforcement Division of the Office of Civil Enforcement of the Office of Enforcement and Compliance Assurance. The EPA enters this Agreement pursuant to sections 205(c) of the CAA, 42 U.S.C. §§ 7524(c).

Governing Law

4. This Agreement concerns Part A of Title II of the CAA, CAA §§ 202–219, 42 U.S.C. §§ 7521–7554, and related regulations. These laws aim to reduce emissions from mobile

sources of air pollution, including hydrocarbons, carbon monoxide, oxides of nitrogen, particulate matter, and greenhouse gases. The Alleged Violations of Law, stated below, regard motor vehicles, specifically heavy-duty motor vehicles, for which 40 C.F.R. Parts 85 and 86 set emission standards and section 203 of the CAA, 42 U.S.C. § 7522, sets compliance provisions. This section of the Agreement summarizes the law that governs these allegations.

5. To ensure that every motor vehicle introduced into United States commerce satisfies the applicable emission standards, the EPA runs a certification program. This certification program is designed to ensure that every motor vehicle sold in the United States conforms in all material respects to a vehicle that has been approved by the EPA. The EPA approves vehicles by issuing certificates of conformity (COC).
6. To obtain a COC, a manufacturer must submit a COC application to the EPA for each test group and each model year that it intends to manufacture and sell in the United States.
7. “For incomplete light-duty trucks and incomplete heavy-duty vehicles, a certificate covers only those new motor vehicles which, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification.” 40 C.F.R. § 86.1848(c)(4).
8. The CAA prohibits manufacturers of new motor vehicles from selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing (and no person may cause any of the foregoing with respect to) any new motor vehicle unless that vehicle is covered by an EPA-issued COC. CAA § 203(a)(1), 42 U.S.C.

§ 7522(a)(1).

9. Anyone who, since January 12, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported (or caused the foregoing with respect to) a motor vehicle that was not covered by a COC in violation of section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), is subject to a civil penalty of up to \$37,500 for each such vehicle. 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

Factual Background

10. In model years 2014 and 2015, Respondent purchased certain Ram ProMaster 3500 cab chassis from FCA US LLC (previously Chrysler Group LLC). Respondent subsequently assembled these incomplete heavy-duty motor vehicles into complete class C coaches, namely the Winnebago Trend model and Itasca Viva! model. Respondent then sold the complete vehicles to its dealers.
11. The cab chassis were purportedly covered by the EPA-issued COC for test groups ECRXD03.65V0 (model year 2014, gasoline fueled), ECRXD03.05VV (model year 2014, diesel fueled), FCRXD03.65V0 (model year 2015, gasoline fueled), or FCRXD03.05VV (model year 2015, diesel fueled). The applications for these COCs, and the labels on the cab chassis, specified that the maximum curb weight for these vehicles was 5,150 pounds (model year 2014) or 6,150 pounds (model year 2015).
12. On or about July 22, 2015, Respondent disclosed to the EPA that it had sold the above-described vehicles, and that the curb weight of the complete vehicle exceeded the maximum curb weight stated in the applications for the COCs that purportedly cover them.

13. As of the time of its signature of this Agreement, Respondent has not delivered to its dealers or any person approximately 56 complete vehicles that have been in its possession since discovering the compliance problem in July 2015. Respondent intends to deliver these vehicles, but agreed with the EPA that it would first resolve the Alleged Violations of Law and deliver them consistent with this Agreement.
14. Respondent has applied supplemental labels to the above-described approximately 56 vehicles. Each label states: "This motor vehicle is not EPA certified, but is legal for sale at up to 8,150 lbs. curb weight pursuant to the terms of a settlement agreement with the US EPA, Docket AED/MSEB # 8255."

Alleged Violations of Law

15. Respondent is a "person." CAA § 302(e), 42 U.S.C. § 7602(e).
16. Respondent is a "manufacturer." CAA § 216(1), 42 U.S.C. § 7550(1).
17. Respondent sold, offered for sale, introduced into commerce, or delivered for introduction into commerce (or caused the foregoing with respect to):
 - (a) 811 heavy-duty, gasoline fueled motor vehicles purportedly covered by the COCs for test groups ECRXD03.65V0 (model year 2014) or FCRXD03.65V0 (model year 2015); and
 - (b) 41 heavy-duty, diesel fueled motor vehicles purportedly covered by the COCs for test groups ECRXD03.05VV (model year 2014) or FCRXD03.05VV (model year 2015).
18. These vehicles are subject to the CAA's certification requirements and are not exempt.
19. Each of these 852 vehicles exceeded the maximum curb weight stated in the applications for the COCs that purportedly cover them. As such, the vehicles are not covered by these

COCs. 40 C.F.R. § 86.1848(c)(4). No other COC covers these vehicles.

20. Therefore, Respondent violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), each time it sold, offered for sale, introduced into commerce, or delivered for introduction into commerce (or caused the foregoing with respect to) every one of these 852 motor vehicles.

Terms of Agreement

21. Respondent:
- (a) agrees that the EPA has jurisdiction over this matter under section 205(c) of the CAA, 42 U.S.C. § 7524(c);
 - (b) admits to the Factual Background stated above;
 - (c) neither admits nor denies the Alleged Violations of Law stated above;
 - (d) agrees to pay the civil penalty stated below;
 - (e) agrees to any conditions specified in this Agreement;
 - (f) waives any right to any hearing, trial, adjudication, or proceeding (including review under sections 205(c) and 307(b)(1) of the CAA, 42 U.S.C. §§ 7534(c) and 7607(b)(1)) on any terms of this Agreement and on any issue of law or fact related to the Alleged Violations of Law and Factual Background stated above;
 - (g) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action governed by federal law in a United States District Court to enforce this Agreement and to seek additional remedies for such breach;
 - (h) agrees that Respondent may not delegate Respondent's duties under this Agreement to any other person without the written consent of the EPA, which

- may be granted, conditionally granted, or withheld at EPA's unfettered discretion;
- (i) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action;
 - (j) acknowledges that this Agreement will be available to the public and agrees that it does not contain any confidential business information or personally identifiable information;
 - (k) acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (see 31 U.S.C. § 7701);
 - (l) certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and
 - (m) acknowledges that there are significant penalties for knowingly submitting false or misleading information, including the possibility of fines and imprisonment (see 18 U.S.C. § 1001).
22. For purposes of this proceeding, the Parties, desiring to settle this matter, each agree that:
- (a) this Agreement is in the public interest and is an appropriate way to resolve this matter;
 - (b) this Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof;
 - (c) this Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the

counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Agreement;

- (d) its undersigned representative is fully authorized by the Party whom he or she represents to bind that Party to this Agreement and to execute it on behalf of that Party;
- (e) each Party's obligations under this Agreement constitute sufficient consideration for the other Party's obligations under this Agreement; additionally, the Parties agree that EPA's covenant not to sue Respondent (stated below) during the time period between the date that the EPA signs this Agreement and termination of the EPA's covenant (if and when this occurs) constitutes sufficient consideration for the satisfactory completion of each and every one of Respondent's obligations under this Agreement; and
- (f) each Party will bear its own costs and attorney fees in the matter resolved by this Agreement.

23. Respondent agrees to pay to the United States a civil penalty of \$237,000 (the Civil Penalty). The Civil Penalty reflects a 75 percent reduction to the gravity component of what would otherwise have been the appropriate penalty in this matter had Respondent not disclosed the violations described above in satisfaction of conditions (2) through (9) of EPA's Audit Policy. Incentives for Self-Policing: Discovery, Disclosure, Correction

and Prevention of Violation, 65 Fed. Reg. 19,618, 19,625-26 (April 11, 2000).

24. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the date that the EPA signs this Agreement. EPA agrees to provide to Respondent at the email address provided on Respondent's signature page, below, a copy of the executed Agreement within 5 calendar days of that date.
25. Respondent agrees to pay the Civil Penalty in the manner specified below:
 - (a) Pay the Civil Penalty using any method provided on the following website:
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>;
 - (b) Identify each and every payment with "AED/MSEB # 8255"; and
 - (c) Within 24 hours of payment, email proof of payment to Evan Belser at belser.evan@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with "AED/MSEB # 8255").
26. Respondent agrees to pay the following stipulated penalties to the EPA in the manner specified by Paragraph 25 not more than 30 days after receipt of written demand by the EPA for such penalties: \$5,000 per day to the United States if and when it fails to timely pay the Civil Penalty, or provide proof thereof, in accordance with Paragraph 23–25.

Effect of Agreement

27. By its signature below, the EPA covenants not to sue Respondent for civil penalties for the Alleged Violations of Law stated above, but such covenant automatically terminates

90 days after the date that the EPA signs this Agreement if on that date Respondent has failed to timely and satisfactorily pay the Civil Penalty required by Paragraphs 23–25 or pay any and all stipulated penalties demanded under Paragraph 26. If and when such covenant terminates, the United States at its election may seek to compel performance of the terms of this Agreement and seek other relief in a civil administrative or judicial action under the CAA, as a matter of contract, or both.

28. If Respondent fails to timely pay any portion of the Civil Penalty, the EPA may:
- (a) request that the Attorney General bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10% quarterly nonpayment penalty (see 42 U.S.C. § 7413(d)(5));
 - (b) refer the debt to a credit reporting agency or a collection agency (see 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33);
 - (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the United States), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (see 40 C.F.R. Part 13, Subparts C and H); and
 - (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (see 40 C.F.R. § 13.17).
29. Penalties paid pursuant to this Agreement are not deductible for federal tax purposes. 28 U.S.C. § 162(f).

30. This Agreement applies to and is binding upon the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent or if they continue a substantive portion of Respondent's business that is regulated under the CAA. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.
31. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local certificate, license, or permit.
32. The EPA reserves the right to terminate its covenant provided by this Agreement if and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was or is materially false or inaccurate. If and when such termination occurs, the EPA reserves the right to pursue, assess, and enforce legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.

In the Matter of:

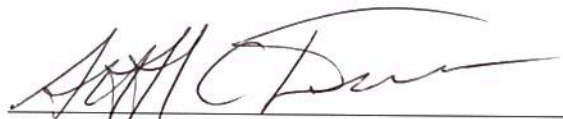
Winnebago Industries, Inc.

Respondent.

Administrative Settlement Agreement

Docket No.
AED/MSEB # 8255

By my signature, I execute this Agreement on behalf of Winnebago Industries, Inc., and thereby enter Winnebago Industries, Inc., into this Agreement and bind Winnebago Industries, Inc., to this Agreement.


Signature

8/26/2015
Date

Printed Name: Scott C. Folkers

Title: VP, General Counsel & Secretary

Address: 605 W. Crystal Lake Rd., Forest City, IA 50436

Respondent's Federal Tax Identification Number: 42-0802678

Email address for receipt of copy of Agreement: sfolkers@wgo.net

In the Matter of:

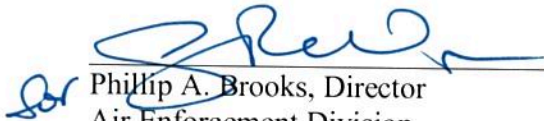
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Respondent.


Administrative Settlement Agreement

Docket No.
AED/MSEB # 8255

By my signature, I execute this Agreement on behalf of the United States Environmental Protection Agency and thereby enter the EPA into this Agreement and bind the EPA to this Agreement.



Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001


Date